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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The Estate Of Bibi Ahmad, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

UnitedHealth Group Inc., United Healthcare
Inc., and DOES 1-50 inclusive,

Defendants.

Case No. 8:23-cv-02303

**CLASS ACTION COMPLAINT
FOR DAMAGES AND CIVIL PENALTIES**

1. VIOLATION OF THE FALSE
ADVERTISING LAW, CAL. BUS. AND
PROFESSIONS CODE § 17500 ET SEQ.
2. VIOLATION OF THE UNFAIR
COMPETITION LAW, CAL. BUS. AND
PROFESSIONS CODE §17200 ET SEQ.
3. VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT, CAL. CIV.
CODE § 1750 ET SEQ.
4. NEGLIGENT MISREPRESENTATION
5. INTENTIONAL
MISREPRESENTATION
6. UNJUST ENRICHMENT
7. BREACH OF EXPRESS WARRANTY
8. INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

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CLASS ACTION COMPLAINT

Plaintiff, the Estate of Bibi Ahmad (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class Members” or “Class”), by and through her attorneys, brings this class action against Defendants UnitedHealth Group, Inc., United Healthcare, Inc., and Does 1-50, inclusive (collectively, “Defendants” or “United”) and alleges as follows:

PRELIMINARY STATEMENT

1. This putative class action arises from the misleading Medicare Advantage (“MA”) advertising practices of United Healthcare and UnitedHealth Group (collectively “United”), the nation's largest provider of for-profit MA plans. This suit is grounded in a pressing and systemic issue because United’s ongoing deceptive practices are not merely incidental, they are central to its strategy of diverting vulnerable beneficiaries out of the government-funded Original Medicare (“OM”) and Medicaid programs into United’s own overly profitable, commercially driven MA plans.

2. At the heart of United’s scheme are its own starkly contrasted representations. United’s official Medicare Advantage information website truthfully states that “...*Medicare Advantage replaces* [Original Medicare],” yet its widespread, direct to consumer advertisements, emails, and communications misleadingly assert otherwise– that its MA plans “*combine the benefits of Original Medicare (Parts A and B) with additional benefits...*” and that their MA plans include “*all the benefits of Medicare.*”

3. United’s inaccurate advertisements that its MA members are not giving up their OM benefits but are “adding to them”, and that MA is a “fallback” plan– are not isolated incidents, or puffery, but a deliberate and pervasive tactic inducing MA enrollment spanning multiple years. Consumers who are misled into enrolling into MA would be required to forfeit their OM card completely, meaning that they are no longer able to receive any benefits of OM. However, United expressly advertises MA as an enhancement to OM (“*get all the benefits of Original Medicare, plus valuable extras*”) where, in reality, consumers that were misled into enrolling have lost OM and its benefits.

4. United’s conscious non-disclosure of material facts to their MA enrollees of their

highly restricted and shrinking MA network of participating hospitals and providers, limited geographic area of services, substantially restricted skilled nursing facility services, restricted specialist access, prior authorization requirements and known improper denials¹, pre-payment medical record reviews, and high rate of improper payment denials are core to its oversized MA member enrollment. As a result, United MA members incorrectly present and use their government issued OM cards for services, which are ultimately denied by OM *and* United– and payment becomes the full responsibility of the beneficiary to bear out-of-pocket.

5. The impact of United’s practices is profound and far-reaching. United’s misleading marketing has led to significant and sustained unfair growth in its MA enrollment, exploiting the trust of a demographic that is most often elderly, disabled, and financially constrained. This vulnerable demographic relies heavily on clear and accurate information to make informed healthcare and financial decisions at a critical time in their life. The discrepancy in United’s messaging has materially contributed to a widespread misunderstanding about the nature of MA plans, leading beneficiaries to unknowingly forfeit their OM coverage, without ever being advised or understanding that they have done so.

6. United’s deliberately misleading MA strategy has been alarmingly effective. Dominating the MA market, United now insures a full third of all MA beneficiaries in the U.S., and a fifth of its health insurance customers are under MA plans. United’s MA plans are 200% as profitable as its other plans, and have the added benefit of being funded entirely by taxpayer dollars as guaranteed monthly government capitated payments which are paid regardless of whether United fails to pay out any benefits for its MA members. United’s MA growth has been fueled by aggressive marketing tactics that prioritize profitability over transparency, always at the expense of the most vulnerable.

7. The consequences of United’s actions are not just individual but systemic. As United’s inaccurate advertisements and aggressive marketing and sales tactics proliferate, so too do the number of seniors misled about their healthcare options. The escalation of United’s deceptive MA advertising practices has led to a full doubling of consumer complaints and

¹ See Office of Inspector General April 2022 report, <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

1 concerns, not only from the affected seniors but also from regulatory bodies such as Congress
2 and the Center for Medicare and Medicaid Services (“CMS”)².

3 8. In sum, the damages arise from systematic and egregious misconduct by United
4 in the administration of its MA plan. United has engaged in a pattern of overbilling the
5 Medicare Trust, misrepresenting the health status of its members (to appear sicker than they
6 are) to secure inflated government reimbursements. Simultaneously, United underpays
7 healthcare providers with rates significantly lower than the standard Medicare fees and denies
8 beneficiaries access to necessary medical care through various deceptive schemes. Moreover,
9 United has contested government legal efforts to regulate these practices, retaining upcoded
10 overpayments it admits were not rightfully obtained.

11 9. This lawsuit seeks to hold United accountable for its actions, which stand in clear
12 violation of the California False Advertising Law (Business and Professions Code § 17500 et
13 seq.), the Unfair Competition Law (Business and Professions Code § 17200 et seq.), the
14 Consumers Legal Remedies Act (Civil Code § 1750 et seq.), as well as federal statutes including
15 the Federal Trade Commission Act (15 U.S.C. §45) and Lanham Act (15 U.S.C. § 1125). These
16 laws were enacted to protect consumers from precisely the kind of deceptive and unfair practices
17 that United has systematically employed in its successful pursuit of becoming the largest MA
18 insurer and recipient of taxpayer dollars.

19 **FACTUAL BACKGROUND**

20 10. In direct contradiction to its own official Medicare information website, United
21 has engaged in widespread dissemination of inaccurate advertisements and a barrage of
22 unsolicited emails to vulnerable Medicare beneficiaries falsely stating that “A Medicare
23 Advantage plan from UnitedHealthcare *combines the benefits of Original Medicare (Parts A and*
24 *B) with additional benefits...*” This misrepresentation starkly contrasts with the United
25 website's accurate representation that “Medigap adds to Original Medicare while *Medicare*
26 *Advantage replaces it.*”

27
28 ² <https://www.healthcarefinancenews.com/news/cms-cracks-down-misleading-medicare-advantage-marketing>

11. United's inaccurate MA advertisements include:

- a) Conscious nondisclosure of restricted provider networks, provider non-participation in MA plans, prior authorization requirements for care, limited reimbursements, restricted skilled nursing facility benefits, co-pays, premiums and other features;
- b) Inappropriate or confusing marketing practices leading beneficiaries to enroll in MA plans without adequately understanding the coverage into which they were enrolling. (i.e., beneficiaries believed they were signing up for a Medicare Supplement (Medigap) Plan or Medicare Drug Plan (DP), rather than an MA plan, and they did not understand they were being disenrolled from OM;
- c) Fraudulent activity, including beneficiaries who were enrolled in MA without any contact with a sales agent, or after only inquiring about the plan, forged signatures, misrepresentations by agents and producers, or improper use of personal information;
- d) Aggressive sales practices such as cross-selling, whereby agents used access to beneficiaries (afforded under the Medicare Modernization Act, which allows producers to discuss additional coverage options such as Prescription Drug Plans, but instead has led to pressuring beneficiaries into MA insurance products; and
- e) Improper enrollment into MA plans of individuals with Alzheimer's disease or advanced dementia, mentally incapacitated individuals, or beneficiaries with limited English proficiency, as well as unsuitable enrollment of dual-eligible beneficiaries.

12. United's misleading communications have played a pivotal role in its strategy to improperly disenroll beneficiaries out of OM and into United's more lucrative for-profit MA plans. The intentional misrepresentation of the nature of MA plans has led Plaintiff and Class Members to make misinformed decisions about their healthcare coverage.

13. Some of the experiences that Plaintiff and Class Members have had would be considered fraud by federal authorities, such as a United MA marketer asking for a beneficiary's Medicare or Social Security number before offering plan details or calls advertising time-limited special discounts and 'free groceries.' United's urgent captioned ads, many with oversized

1 countdown clocks showing hours and seconds– call for immediacy– falsely inferring that
 2 “penalties” or loss of OM benefits would result by not responding to United’s MA ads. Further,
 3 there are well-known patterns of overly aggressive, deceptive and abusive marketing and sales
 4 practices in the MA plan marketplace³.

5 14. The material discrepancy in United's messaging is strategically designed to
 6 conceal the fact that enrollment in a MA plan explicitly results in disenrollment from OM. This
 7 deceptive tactic has been central to United’s efforts to increase its MA enrollment and market
 8 share by having beneficiaries incorrectly present their invalid OM card for services at OM
 9 providers, thereby ratifying United foregoing its financial responsibilities to pay for these
 10 rendered medical services.

11 15. The scope and impact of United’s misleading advertising campaigns have become
 12 so significant that they have prompted legislative attention. A number of governmental divisions
 13 and agencies, including Congress, the Centers for Medicare and Medicaid Services (“CMS”), and
 14 the National Association of Insurance Commissioners have taken steps to address this abuse,
 15 particularly as it exploits vulnerable senior populations. See **Exhibit D**

16 16. United’s MA market dominance is unprecedented. In 2023, the average Medicare
 17 beneficiary had access to 43 MA plans, the highest number ever. Despite this, United has
 18 secured the largest share of MA enrollment, growing from 20 percent in 2010 to 29 percent in
 19 2023⁴. This growth equates to United alone accounting for 8.9 million of the total 30.9 million
 20 MA enrollees.

21 17. United’s core strategy focuses on the profitability of MA plans, which are 200%
 22 as profitable than its non-government-funded commercial plans. Of the 50 million Americans
 23 insured by United, a full fifth are now enrolled in these taxpayer-funded, privatized for-profit
 24 MA plans.

25 18. Driven by the discovery that inaccurate marketing leads to higher MA

26 ³ <https://www.kff.org/report-section/how-health-insurers-and-brokers-are-marketing-medicare-report>

27 ⁴ Medicare Advantage in 2023: Enrollment Update and Key Trends | KFF
 28 <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/> (Last
 accessed 11/18/2023)

1 conversions, United has shifted its focus and resources from commercial plans to aggressively
2 marketing its MA plans. This shift has involved tactics that pressure OM beneficiaries to switch
3 to United's much more restricted MA plans, characterized by the limitations and improper
4 denials outlined above. As a result, MA beneficiaries are denied services, and otherwise incur
5 substantial out-of-pocket costs for services which would have been fully covered by OM.

6 19. United's MA marketing tactics deliberately target highly vulnerable populations,
7 including the elderly, disabled, and those on fixed or marginal incomes. In particular, United
8 targets the 12 million dual eligible "Medicare-Medicaid" beneficiaries with promises of rebates,
9 meals, free groceries, and other benefits— which are often not even offered in their geographic
10 area, because they are the most financially constrained. United's enrollment numbers have
11 consistently outpaced other firms, with over 1 million new MA beneficiaries added between
12 March 2022 and March 2023.

13 20. In the first quarter of 2023 alone, United added 655,000 new MA members,
14 largely due to these predatory advertising practices. As documented in the Appendix (25
15 unsolicited United emails sent to a single OM beneficiary from November 2022 to November
16 2023), United's success in MA enrollments can be substantially attributed to these misleading
17 advertising strategies.

18 21. United's advertising falsely suggests that its MA Plans are additions to, rather
19 than replacements for, OM. These advertisements make unwarranted and overly broad claims
20 about the superiority of these plans and fail to mention the known restrictions of MA coverage.
21 United and its agents fully misstate their MA plan is a "fallback" plan and only supplement,
22 but do not replace OM. They opt for these knowingly inaccurate statements in order to induce
23 enrollment into their MA plans, and suppress more accurate statements that the MA plan fully
24 replaces and extinguishes OM, which would result in substantially lower profits and decreased
25 market share.

26 22. Furthermore, United's MA advertisements often create a false sense of urgency
27 and sheer panic among seniors, suggesting that they might miss out on financial savings or
28 benefits, and incur "penalties" if they do not enroll in United's MA plan. This tactic can leave
beneficiaries under the impression that they have incomplete coverage with OM and are entitled
to extra benefits under MA.

23. United's practices are ongoing despite significantly rising senior complaints about these deceptive MA marketing practices. Such complaints, which numbered fewer than 16,000 in 2020, increased to nearly 40,000 in the first eleven months of 2021, according to CMS.

24. The culmination United's misconduct represents a clear violation of key legal statutes including the California False Advertising Law, the Unfair Competition Law, the Consumers Legal Remedies Act, the Federal Trade Commission Act, and the Lanham Act—which are collectively a bar to such false advertising and unfair business practices.

UNITED'S MISLEADING MEDICARE ADVANTAGE ADVERTISEMENTS

25. Plaintiff and Class Members challenge United's systematic misleading of Medicare beneficiaries, particularly targeting vulnerable seniors, by portraying its Medicare Advantage ("MA") plans as an enhancement to Original Medicare ("OM") as well as its MA plans combining with OM, not a replacement. United explicitly advertises that its MA plan gives ***"all the benefits of Original Medicare plus extra valuables"*** and that it ***"combines"*** and gives ***"more benefits than Medicare"***, however, United's MA plan fully replaces and extinguishes any OM benefits. In other words, the MA members no longer have OM from the government, and have instead a commercial plan from a for profit commercial carrier- United. United further inaccurately represents itself as a "Medicare Plan Expert" in countless advertisements and emails, which incorrectly states its expertise is 'Medicare', not its for-profit Medicare Advantage plan- hence misleading OM beneficiaries into believing they are relying on statements and discussions with either Medicare directly, or at a minimum an objective and unbiased OM plan expert.

26. United's inaccurate advertising strategy is built on the false premise that MA plans are *an addition* rather than a replacement to OM, leading beneficiaries to enroll under knowingly incorrect assumptions. This key deception is exemplified by United's consistent use of the term *"combined"* in their marketing materials as well as their sales agents, suggesting an addition of benefits, while in reality, enrollment in MA necessitates the forfeiture of government OM benefits. MA is a commercial insurance product whereas OM is a federal government product.

27. Furthermore, United misleadingly represents that MA plans are "better" than

OM, despite substantial MA restrictions, such as the need for prior authorizations, pre-payment medical records review, restricted networks and providers, substantially lower provider reimbursement rates, substantially reduced skilled nursing facility benefits, higher out-of-pocket costs, high rates of denied services, and limited geographic coverage, all of which starkly contrast with the unrestricted OM nationwide coverage and access to any doctor, any hospital, and any specialist– without need for the MA required prior authorizations or post service and pre-payment medical record reviews⁵. While some beneficiaries or employers make a choice to enroll in MA plans, these are typically a known trade of less choice and restricted benefits for financial savings, not a “superior” insurance product. To the contrary, when patients are actually sick, they overwhelmingly disenroll from MA and back into OM– with substantial hardship including new underwriting for their Medicare Supplemental plans. That is because OM is widely held by patients and providers as the premium and top health insurance plan as compared to nearly all other commercial plans.

28. It is widely held that “*Medicare Advantage is neither Medicare nor an advantage.*” MA is a commercial alternative to government provided OM. Much like private prisons, it is privately run but taxpayer funded through the Medicare trust. Further, it is not an “advantage” as it relinquishes invaluable freedom of choice, freedom of providers, and freedom of medical services in exchange for a complex labyrinth of “Medicare Dis-advantage” delay and denial tactics. Many beneficiaries do not realize that MA is privatized for-profit option to OM and it is not an added enhancement, but a frank relinquishing of the entirety of the government benefits entitled and provided under OM.

29. Of the roughly 65 million Americans eligible and enrolled in the Medicare program, approximately 50% are enrolled in MA plans with substantial restrictions in terms of services, providers, and subject to each commercial carrier’s “medical necessity” policies. For many retired or disabled people who are living on Social Security, the OM premiums for Part B doctor visits (\$174.70 per month) and Part D prescription drug coverage (\$55.50 per month) are significant. They are drawn into MA because it is perceived to be cheaper, not because it is

⁵ United unveils policy to retroactively deny patient ED claims, Modem Healthcare (Jun. 4, 2021), <https://www.modemhealthcare.com/payment/united-unveils-policy- retroactively-deny-patient-ed-claims>.

1 better or superior to OM.

2 30. Of the 35 million Medicare beneficiaries enrolled in MA programs, more than a
3 third are enrolled in United MA plans through the described aggressive and inaccurate
4 advertising campaigns intended to cause beneficiaries to believe there to be a sense of urgency
5 and panic in disenrolling from OM and signing up for the next year's United MA plan. United
6 achieves this false urgency through a barrage of emails featuring an oversized count down
7 "doomsday clock." See Appendix.

8 31. United has systematically and knowingly, misled beneficiaries, especially the
9 marginalized OM beneficiaries by portraying its MA plans as combined with OM, and also as
10 equivalent or superior to OM. This fundamental misrepresentation violates truthful advertising
11 principles and breaches trust. United's advertising is designed to mislead OM beneficiaries into
12 enrolling in United's MA Plans under the false premise that the MA Plan will be "combined"
13 with their OM plan. United erroneously portrays MA as an additional plan and a "fallback" plan,
14 rather than a replacement which they are.

15 32. The patently inaccurate claim that United MA plans are "combined" with OM is
16 also misleading, leading beneficiaries to believe they will retain OM benefits while gaining
17 additional MA benefits, which is not the case. United broadly misrepresents that MA plans are
18 "better" than OM, despite MA plans having substantial material restrictions. Some United MA
19 ads suggest that people with OM miss out on benefits to which they are entitled if they are not
20 enrolled in a MA plan.

21 33. United MA sales agents are also cashing in for oversized commissions per
22 enrolled MA beneficiary by taking advantage of loopholes and loosened rules around marketing
23 and enrollment to beneficiaries— often badgering seniors on the phone, confusing them on
24 television, and inundating them with mountains of mail and email. An increasing number of MA
25 marketing materials are fraudulent or deceptive, undermining beneficiary access to care and
26 trust in the Medicare program. Of particular concern are reports of vulnerable seniors' and
27 people with disabilities' health plans without their consent.

28 34. Contrasting coverage and costs between OM and MA plans, United ads do not
mention OM, and also fail to disclose the difficulties in disenrolling from MA plans and
reenrolling in OM with new Medigap underwriting, and the known limitations imposed by MA

plans compared to the very broad-ranging and unrestricted coverage of OM.

IMPACT ON MEDICARE BENEFICIARIES AND HEALTHCARE SYSTEM

35. United's deceptive MA business practices, characterized by systemically repeatedly denying valid claims and manipulating patient data and diagnosis, have led to unpaid medical bills for MA enrollees and undue burdens on these beneficiaries. Their misleading claim that beneficiaries retain OM coverage in addition to MA plans has caused confusion and financial liabilities when care is sought from non-MA providers. This confusion is exacerbated during peak enrollment periods, where seniors are bombarded with unsolicited invitations lacking full disclosure of the implications of switching from OM to MA. United's additional practice of unauthorized enrollments and the aggressive sales tactics incentivized by oversized agent commissions further demonstrate United's unethical enrollment practices. *See Exhibit A.*

36. United's deceptive practices burden MA enrollees with unpaid medical bills, and as a direct result not only impacts the individual MA patients but also strain the broader healthcare system, which must navigate these unpaid bills and denied claims.

37. The lack of stringent oversight within United's MA enrollment practices is further evidenced by the minimal disciplinary action taken against producers and sales agents even when they are alleged to have forged MA enrollment forms. This indicates a broader issue of lax oversight and accountability in United's operations. Additionally, United has been accused of underreporting complaints to CMS, which skews benchmarks for bonuses⁶ and creates a misleadingly positive picture of consumer satisfaction. Despite the increasing number of complaints, United continues to enroll new members in their MA plans, relying heavily on misleading advertising. This continued practice highlights a persistent issue in their approach to MA enrollment and advertising, raising questions about the ethical standards and consumer protection within their operations.

38. United's administrative practices, including the use of faulty algorithms and

⁶ United — the biggest MA payer in the U.S. — received \$2.8 billion of the total \$10 billion in MA bonuses for 2022. <https://www.healthcarediver.com/news/cvs-income-hit-ma-star-ratings-drop/651408/>

artificial intelligence, often lead to the denial of rightful MA claims, undermining the integrity of the claims process and reducing operational costs at the expense of beneficiaries. Moreover, United's reported administrative costs for managing MA benefits are tenfold higher than those for OM, indicating a misaligned focus on profit over patient care—earmarking taxpayer dollars for a complex system of administrative claim delays and denials, which should otherwise go toward legitimate payment of medical care. The company's systematic approach to misleading beneficiaries, particularly through campaigns that create panic and confusion, has eroded the trust in the Medicare program and contributed to an increase in predatory and deceptive marketing complaints. By targeting vulnerable populations, including those with cognitive impairments and dual eligibilities, United has engaged in practices that not only violate advertising statutes but also fundamentally undermine the principles of patient-centered healthcare.

39. United's practices have also led to a growing reluctance among hospitals and doctors to accept MA patients, primarily due to United's known business scheme of unfair claims processing and frequent denials. This is compounded by United's failure to acknowledge the rejection of their MA plans by many healthcare systems, impairing beneficiaries' access to specialized care. As a result of United's inaccurate MA plan advertising and deceptive enrollment, there has been a systematic ripple cripple effect across the healthcare system, decimating both community hospitals, providers, and beneficiaries. Doctors and hospitals are increasingly showing reluctance to accept United MA patients, primarily due to United's unfair claims processing, frequent denials, and a convoluted and unbalanced appeals process. This reluctance is further compounded by United's refusal to acknowledge the rejection of their MA plans by many clinics and hospital systems, leading to impaired access for beneficiaries to specialized care.

40. A crucial aspect of United's MA strategy involves exploiting the high rate of improper claim denials⁷ and low rate of claim appeals. United's exploitation is with the

⁷An April 2022 U.S. Department of Health and Human Services government report determined that eighteen percent (18%) of United MA payment denials were improper—for claims that met Medicare coverage rules and

1 understanding that many beneficiaries struggle with the complex, labor intensive, and
 2 unfavorable appeals process. This allows United to avoid paying for prescribed care, leading to
 3 financial gains at the expense of beneficiaries who often must forgo necessary treatments or
 4 deplete personal savings to cover medical expenses. *See Patients 2,3, and 5.*

5 41. United's decade-long campaign of deceptive advertising, promoting the benefits of
 6 MA plans over traditional OM, has been a key driver of their profits, often at the detriment of
 7 beneficiaries, the government, and the healthcare providers. United's predatory conduct has
 8 misled millions of individuals, denying them a true understanding of the consequences of
 9 relinquishing OM benefits for the more limited MA plans.

10 42. United benefitted financially from its misconduct in at least five ways. First,
 11 United avoided paying benefits out of its own funds for medically necessary care provided to its
 12 MA beneficiaries out of its network.. Second, United continued charging the government and
 13 receiving the monthly capitated⁸ payment per beneficiary, while improperly denying valid claims
 14 for services rendered using the OM government issued card. Third, United benefitted by gaining
 15 healthier MA members through the services which they received with false presentation of their
 16 OM government issued cards. Fourth, United delayed and denied even valid in-network MA
 17 claims, and after exhaustive appeals would pay on a fraction of claims and at a fraction of the
 18 OM approved rates. Fifth, United scours the medical records it demands through the appeals
 19 process for these beneficiaries to submit additional diagnosis data to the government for bonus

20
 21 Medicare Advantage Organizations (MAO) billing rules for medical services that providers had already delivered
 22 to MA members.

23 In the same report, it was found that thirteen percent (13%) of MA prior authorization denials were improper—for
 24 service requests that met Medicare coverage rules, likely preventing or delaying medically necessary care for MA
 Beneficiaries. See <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

25 ⁸ In the MA capitated payment model, United receives a fixed amount of money per patient from the government
 26 regardless of the number of services provided to the patient. According to the Office of inspector General's April
 27 2022 report, the "central concern about the capitated MA payment model is the potential incentive for Medicare
 28 Advantage Organizations (MAOs) to deny beneficiary access to services and deny payments to providers in an
 attempt to increase profits." United issues millions of denials each year, and CMS's annual audits of MAOs have
 highlighted widespread and persistent problems related to inappropriate denials of services and payment. See
<https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

1 payments while concurrently misrepresenting to the government that the beneficiaries were
 2 “sicker” than they actually were. These practices warrant heightened scrutiny due to the
 3 inherent conflicts of interest in United’s inaccurate MA advertising.

4 43. Given the nature of United’s conduct, it would be inequitable to permit United to
 5 retain these benefits derived from these systemic practices. Thus, Plaintiff and the Class are
 6 entitled to appropriate equitable relief, which should include but is not limited to, an
 7 appropriate monetary award based on disgorgement of unjust profits, restitution for losses
 8 incurred, surcharges, and other remedies as may be deemed just and equitable under the
 9 circumstances.

10 PARTIES

11 44. Plaintiff Bibi Ahmad, now deceased, represented by the Estate of Bibi Ahmad,
 12 was at all times relevant to this action a citizen of California, residing in Orange County.

13 45. Defendant **UnitedHealth Group, Inc.** (“UnitedHealth Group” or “UHG”) is a
 14 publicly held Delaware corporation, headquartered at 9800 Health Care Lane, Minnetonka,
 15 Minnesota 55343. UnitedHealth Group conducts insurance operations nationwide, representing
 16 to consumers that UnitedHealth Group and its subsidiaries including **United HealthCare**
 17 **Insurance Company, United HealthCare Services, Inc., and UnitedHealthcare Service**
 18 **LLC**, represent their commitment to “help people live healthier lives and help make the health
 19 system work better for everyone.” UnitedHealth Group markets and issues health insurance and
 20 insures, issues, administers, and makes coverage and benefit determinations related to the
 21 health care policies nationally through its various wholly owned and controlled subsidiaries,
 22 controlled agents and undisclosed principals and agents, including Defendant UnitedHealthcare,
 23 Inc. Defendant UnitedHealth Group is licensed and registered to conduct and does conduct
 24 business in all 50 states and Puerto Rico and Guam, and is thereby subject to these laws.

25 46. Defendant **United Healthcare, Inc.** (“United Healthcare”) incorporated in
 26 Delaware, is a wholly owned subsidiary of Defendant UnitedHealth Group, Inc., with its
 27 principal place of business at 9800 Health Care Ln, Minnetonka, Minnesota 55343. United
 28 Healthcare markets and issues health insurance and insures, issues, administers, and renders
 coverage and benefit determinations related to the health care policies. Defendant United

1 Healthcare is licensed and registered to conduct business in all 50 states, and does conduct
 2 business in all 50 states and Puerto Rico and Guam, and is thereby subject to the laws and
 3 regulations of all states and territories.

4 47. Defendants are referred to collectively in this Complaint as “United.”

5 48. Plaintiff also sues fictitiously named Defendants Does 1 through 50, inclusive,
 6 pursuant to Section 474 of the California Civil Procedure, because their precise names,
 7 capacities, roles, or liabilities are presently known. These Does are believed to be individuals,
 8 firms, corporations, associations, or entities that have contributed to, participated in, approved
 9 of, or ratified the wrongful acts and practices set forth herein. Plaintiff is informed and believes,
 10 and based upon alleges, that each of the fictitiously named Defendants are responsible in some
 11 manner for the unlawful conduct alleged herein. Plaintiff will seek to amend this complaint to
 12 include these Defendants’ true names and capacities, together with appropriate charging
 language, when such information has been ascertained.

13 49.

14 50. JURISDICTION AND VENUE

15 51. This Court has *subject matter jurisdiction* over Plaintiff’s claims pursuant to 28
 16 U.S.C. § 1332(d)(2). This is a putative class action in which there is a diversity of citizenship
 17 between at least one Plaintiff Class member and one Defendant; the proposed Classes each
 18 exceed one hundred members; and the matter in controversy exceeds the sum of \$5,000,000.00,
 19 exclusive of interest and costs.

20 52. In addition, under 28 U.S.C. §1367, this Court may exercise *supplemental*
 21 *jurisdiction* over the state law claims because all claims are derived from a common nucleus of
 22 operative facts and are such that Plaintiff would ordinarily expect to try them in one judicial
 23 proceeding.

24 53. This Court has *personal jurisdiction* because Defendants although headquartered
 25 in Minnesota, have sufficient minimum contacts with California, and otherwise purposefully
 26 avail themselves of the benefits and protections of California law, so as to render the exercise of
 27 jurisdiction by this Court proper and consistent with traditional notion of fair play and
 28 substantial justice.

54. Venue is proper pursuant to 28 U.S.C. §1391. Defendants regularly conduct

1 business in this District, and a substantial part of the events giving rise to the claims asserted
2 herein occurred in this District.

4 **CLASS ALLEGATIONS**

5 55. Plaintiff(s) bring this action on their own behalf and on behalf of all other
6 persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The
7 Class which Plaintiff(s) seek to represent comprises:

8 “All persons who purchased Medicare Advantage Plan health insurance from Defendants
9 in the United States, including the territories of Guam, and Puerto Rico during the period
10 of four-years prior to the filing of the complaint through the present.”

11 56. Said definition may be further defined or amended by additional pleadings,
12 evidentiary hearings, a class certification hearing, and orders of this Court.

13 57. This action seeks to address the deceptive marketing and enrollment practices by
14 United in relation to its MA plans. The proposed class includes all individuals who were enrolled
15 in United's MA plans through the practices in question during the preceding four-year period.

16 58. Plaintiff asserts that this action is appropriately brought as a class action and
17 intends to move for class certification pursuant to Federal Rules of Civil Procedure Rule 23, or
18 the relevant state procedural rules, at the proper time.

19 59. This lawsuit is suitable for class action treatment due to the commonality of legal
20 and factual issues affecting the Plaintiff and the proposed Class Members, particularly
21 regarding United's marketing and enrollment strategies. United administers numerous MA
22 plans with deceptive and misleading plan language and marketing practices, materially causing
23 harm to beneficiaries enrolled in these plans.

24 60. United frequently enrolled beneficiaries into MA plans without adequately
25 disclosing the limitations and differences compared to OM leading to unexpected denials and
26 limitations in healthcare access for beneficiaries.

27 61. As a result, Plaintiff brings claims on behalf of a class defined as all Medicare
28 beneficiaries enrolled in a United MA plan in the prior four-years who experienced diminished

1 healthcare access or financial harm due to United's deceptive MA enrollment practices.

2 62. There was nothing unique about the way United advertised and enrolled the MA
3 beneficiaries. Instead, United engaged in similar conduct with respect to numerous OM
4 beneficiaries who received their health benefits through government funded plans.

5 63. The sheer number of individuals in the proposed Class renders the joinder of all
6 members impractical, if not impossible. Given United's status as the nation's largest provider of
7 MA plans, the class is likely comprised of a substantial number of affected beneficiaries. This
8 number and the specific identities of Class Members will be further determined during the
9 discovery process. A class action is not only the most efficient but also the most equitable method
10 to adjudicate these claims. Individual litigation would impose undue financial and logistical
11 burdens on class members, many of whom might lack the resources to prosecute their claims
individually.

12 64. Common questions of law and fact unite the Class. These include, but are not
13 limited to, inquiries into whether United disseminated unsolicited emails and communications
14 containing deceptive advertisements about their MA plans, misrepresented the nature and scope
15 of these plans compared to OM, and whether such misrepresentations resulted in financial
16 damages or restricted healthcare access for class members. Establishing these commonalities is
17 essential for demonstrating the suitability of this case for class action treatment.

18 65. Plaintiff will fairly and adequately protect the interests of the Class, is
19 committed to the vigorous prosecution of this action, has retained competent and experienced
20 counsel in class action and complex litigation, and has no interests antagonistic to or in conflict
21 with those of the Class.

22 66. United has engaged in a uniform practice of misleading marketing and
23 enrollment practices, systematically enrolling beneficiaries into MA plans without full disclosure
24 of the limitations and differences from OM, causing widespread confusion and harm.

25 67. Plaintiff and the Class have suffered tangible injury and financial loss as a direct
26 result of Defendants' misconduct. Specifically, Plaintiff and Class Members have incurred
27 personal liability for medical and surgical expenses that would have been covered under OM . To
28 substantiate these claims, Plaintiff will present a range of evidence, including but not limited to
Medicare and United's explanation of benefits documents, which detail denials and limitations of

1 coverage. Additionally, statistical data will be utilized to illustrate the broader impact of these
 2 practices on the Class. This evidence will collectively demonstrate the extent of financial harm
 3 and diminished healthcare access experienced by the Class due to United's deceptive enrollment
 4 practices.

5 68. The trial and litigation of Plaintiffs' claims are manageable. Individual litigation
 6 of the legal and factual issues raised by Defendants' conduct would increase delay and expense
 7 to all parties and the court system. The class action device presents far fewer management
 8 difficulties and provides the benefits of a single, uniform adjudication, economics of scale, and
 9 comprehensive supervision by a single court.

10 69. Defendants have engaged in conduct affecting all Class Members, thus
 11 warranting the pursuit of final injunctive relief and/or declaratory relief applicable to the entire
 12 Class. Such collective legal action is essential to ensure consistent adjudication across all Class
 13 Members, avoiding the potential for disparate rulings that could result in incompatible
 14 standards of conduct for Defendants. This uniform approach in addressing Defendants' practices
 15 is crucial for maintaining the integrity of the legal process and ensuring equitable treatment for
 16 all affected by Defendants' actions.

17 70. Absent a class action, Defendants will likely retain the benefits of their
 18 wrongdoing. Because of the small size of the individual Class members' claims, few, if any, Class
 19 Members could afford to seek legal redress for the wrongs complained of herein. Absent a
 20 representative action, the Class will continue to suffer losses and Defendants will be allowed to
 21 continue these violations of law and to retain the proceeds of its ill-gotten gains.

22 71. As a claims administrator, United maintains detailed records of MA enrollments,
 23 plan terms, and beneficiary communications, which can be used to identify Class Members and
 24 ascertain the full extent of the impact of its practices. Accordingly, the members of the Class can
 25 be readily and objectively ascertained through use of United's records.

26 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

27 **MEDICARE**

28 72. Medicare is a federally operated health insurance program administered by the
 Centers for Medicare and Medicaid Services ("CMS") benefiting individuals 65 and older and

people with disabilities. *See* 42 U.S.C. § 1395c et seq. Medicare coverage applies to any U.S. State, District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. There are 65 million Medicare beneficiaries, eligible by either age or disability.

73. The well-known, official government-issued red, white, and blue card represents Original Medicare. Once enrolled in OM as a right of age, OM benefits are guaranteed for life. OM automatically continues each year, is not subject to any deadlines or penalties, and is not terminated unless the beneficiary voluntarily disenrolls and opts for an MA or alternate plan.



74. Medicare Parts A and B are commonly known as “traditional” or “Original” Medicare (“OM”). Part A covers inpatient hospital and institutional care, while Part B covers physician, outpatient, laboratory, radiology, and ancillary services and durable medical equipment. Under Parts A and B, CMS reimburses healthcare providers (e.g., hospitals and physicians’ offices) directly using a fee-for-service system.

75. Specifically, healthcare providers submit claims to CMS for rendered medical services. CMS, in turn, directly pays providers for each service based on payment rates established by it. CMS’ prices set the national benchmark for what all other carriers and providers charge for each service, codified by standard national codes. Each commercial carrier

1 then sets its contracted fees as a percentage⁹ of CMS's fee schedule.

2 76. CMS has no pre-authorization requirement for any service, no restricted or
3 designated network, no specialist referral requirement, and no restriction or any limitations as
4 to which providers which an OM beneficiary may use. Nearly 99% of U.S. providers and
5 hospitals and clinics are OM providers, hence OM beneficiaries may seek medical care from any
6 specialist and anywhere in the 50 states and U.S. territories.

7 77. Under Medicare Part C, which is at issue in this case, Medicare beneficiaries can
8 elect to forego OM Part A and Part B benefits, and instead receive their insurance through a
9 commercial for-profit non-government MA plan such as those offered by the United MA
10 Organizations ("MAO".) *See* 42 U.S.C. §§ 1395w-21 to 1395w-28.

11 78. Congress expressly delegated authority to CMS to issue rules to implement and
12 regulate Medicare Part C. *See* 42 U.S.C. § 1395w-26(b). Pursuant to that delegation, CMS has
13 promulgated regulations that, inter alia, define the MA organizations' obligations and
14 responsibilities. *See* generally 42 C.F.R. Part 422.

15 79. In addition to issuing regulations, CMS also has defined the MA organizations'
16 obligations contractually. For example, to participate in Medicare Part C, MA organizations
17 must execute a written agreement, or a renewal of the written agreement, with CMS on an
18 annual basis for each of the MA plans they operate. United executed such agreements or
19 renewals annually for all of the MA plans they operated during the relevant period. The
20 material terms and conditions in the Part C annual agreements and renewals remained largely
21 the same.

22 80. By executing these contracts, the United agreed to comply with CMS's

23 ⁹ United is known to reimburse its contracted healthcare providers and hospitals at significantly lower rates than
24 those allowed by CMS, as well as most other commercial carriers for comparable services. In a typical instance,
25 where CMS guidelines set a reimbursement of \$100 for a specific healthcare service, United customarily sets its
26 reimbursement for the identical service and coding between \$60 to \$67.

27 United's practice results in reimbursements that are approximately 33% lower than what Medicare would allocate
28 for the same healthcare services. This discrepancy in reimbursement rates is indicative of United's cost-
containment strategies and unfair payment practices, which substantially impacts both MA beneficiaries and their
ability to obtain care from qualified providers and hospitals.

1 requirements relating to the submission of diagnosis data. Specifically, the contracts require the
 2 MA plans to operate “in compliance with the requirements of [] applicable Federal statutes,
 3 regulations, and policies,” including the “Medicare Managed Care Manual,” and would
 4 “implement a compliance plan in accordance with [42 C.F.R.] § 422.503(b)(4)(vi).”

5 81. Part C regulations require MA organizations to implement compliance
 6 procedures and programs and to submit annual attestations concerning the accuracy and
 7 truthfulness of the diagnosis data they submit to CMS to receive supplemental or bonus
 8 payments for taking care of the “sicker” beneficiaries.

9 82. United’s MA plan is not “Original Medicare” and is operated and managed
 10 entirely by the MAO. United contracts with CMS to receive a fixed capitated monthly payment
 11 per MA member which is not conditioned on United ever providing any services or payments for
 12 care to its MA member whatsoever. *See* 42 C.F.R. §§ 422.2, 422.503(b)(2).

13 83. Under Part C, CMS no longer administrates any benefits or claims for the MA
 14 member, except hospice services. MA beneficiaries receive restricted medical services from MA
 15 contracted providers, such as hospitals and doctors, who must expressly contract with and are
 16 directly paid by the MAO. More specifically, when a healthcare provider furnishes medical
 17 services to a MA member the provider submits claims and encounter data to the MAO, not CMS.
 18 United retains CMS’s monthly capitated per MA member payment regardless of whether United
 19 ever pays a single claim for the beneficiary.

20 84. Once a beneficiary enrolls in a MA plan, CMS will deny any claims received on
 21 their behalf, and their government-issued OM card becomes invalid.

22 **DUAL ELIGIBLES “MEDI-MEDI”**

23 85. Elderly or disabled beneficiaries with qualifying low incomes are eligible for both
 24 Medicare and Medicaid, hence termed “dual-eligibles.”¹⁰ They are not required to pay any
 25 premiums or deductibles for Medicare or Medicaid, and they are also typically provided full
 26 prescription coverage, as well as dental, vision, and hearing benefits through Medicaid.

27 86. Dual eligibles have no restrictions, no required networks, and no prior
 28

¹⁰ Patients 2 and 3 below are two of about 12 million dual eligible people in the U.S. whose medical and social vulnerabilities qualify them for both Medicare and Medicaid.

1 authorization requirements– they may see any doctors whom they wish to see, in any state (not
 2 limited by geography), and may have unlimited diagnostic labs and imaging like CT scans, and
 3 MRI’s—which any physician orders.

4 87. Dual eligibles may change, enroll, or disenroll into alternate plans like MA plan
 5 each quarter. Otherwise, open enrollment for all other Medicare beneficiaries — which runs
 6 from Oct. 15 to Dec. 7 each year — allows seniors to choose a new MA plan if they elect.

7 88. Dual eligibles have options in the form of special MA plans called Dual-Eligible
 8 Special Needs Plans. These offerings may seem to include extra benefits, but can increase
 9 confusion. If a dual eligible enrolls in an MA plan, they would receive few if any health or
 10 financial benefits in comparison to OM and Medicaid. An MA plan would cause them to be
 11 restricted in which doctors they could see, which procedures they could have, and also subject
 12 them to a broad and confusing labyrinth of prior authorization and denial of services– which
 13 they could otherwise have freely had under OM.

14 MEDICARE ADVANTAGE

15 89. The Medicare Advantage (“MA”) program originated with the Balanced Budget
 16 Act of 1997, which added Part C (section 1851 through 1859) to the Medicare Act. Initially
 17 referred to as Medicare + Choice, the program enables most individuals eligible for traditional or
 18 Original Medicare (Parts A and B) to receive healthcare benefits through private insurance
 19 plans that contract with CMS instead of through the federal government. In 2003, the Medicare
 20 Prescription Drug, Improvement, and Modernization Act further amended the Medicare Act,
 21 giving the program its current name.

22 90. The MA program includes a provision that allows Medicare beneficiaries to enroll
 23 in managed health insurance plans that are owned and operated by commercial insurance
 24 organizations, called Medicare Advantage Organizations (“MAO”).

25 91. Under MA, a private insurer contracts with CMS to serve the role of
 26 intermediary between the beneficiaries and the healthcare providers in CMS’s place. The insurer
 27 is responsible for providing at least the same level of benefits that OM offers, and for ensuring
 28 that providers are paid for their services.

92. In return, CMS makes monthly capitated payments to each MAO for each
 beneficiary enrolled in each of the organizations’ MA plans. The government pays the MAO set

1 (“capitated”) per-member-per-month payments (“PMPM”.) These PMPM capitated payments are
 2 pre-determined and fixed before the beginning of each payment year as part of a bidding and
 3 contract negotiation process specified by statute. These payments do not depend on the amount
 4 or types of services actually provided to the beneficiary during the payment year.

5 93. By design and effect, MA plans assume the risk of providing healthcare to their
 6 enrollees that CMS would otherwise bear. MA plans agree to make available a predetermined
 7 set of benefits in exchange for predetermined compensation from CMS.

8 94. Under the MA Program, CMS adjusts these PMPM payments for each
 9 beneficiary. These adjustments reflect the predicted cost of insuring each beneficiary, which is
 10 referred to as the predicted risk. The predicted risk reflects the beneficiary’s age, sex, and other
 11 demographic factors and his or her health status. 42 U.S.C. § 1395w-23(a)(1)(C). CMS uses its
 12 risk adjustment payment system to adjust the capitated amounts based on the expected risk of
 insuring each beneficiary.

13 95. More specifically, for each beneficiary enrolled in a Part C plan, CMS calculates a
 14 risk score—also known as the risk adjustment factor or “RAF”—which acts as a multiplier for
 15 purposes of determining the PMPM payment for that beneficiary. See 42 C.F.R. § 422.308(e).
 16 Beneficiaries who have severe and chronic medical conditions have higher risk scores. Thus,
 17 CMS pays MA organizations more for beneficiaries with such medical conditions and less for
 18 beneficiaries without those conditions.

19 96. Moreover, because the government furnishes MA plans with the same PMPM
 20 regardless of their actual expenditures, there is a substantial financial incentive for MAOs like
 21 United to delay and deny care and payment for MA beneficiaries.¹¹

22 **UNITEDHEALTHCARE**

23 97. United is the nation’s largest MA Organization (MAO), selling over 50 MA and
 24 Drug Prescription plans, heavily funded by taxpayer dollars. While United offers non-
 25 government funded health plans to a broad spectrum of individuals and employers, its focus in
 26 the past decade has dramatically shifted towards MA plans, which are 200% more profitable

27
 28 ¹¹ See <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

1 than traditional commercial insurance offerings.

2 98. United's growth in the MA market is striking. From serving one-in-five MA
3 beneficiaries in 2016 to capturing approximately one-third of this market by 2023, United now
4 insures nearly 9 million MA beneficiaries. In 2019, this number was 5,857,700 enrolling
5 members in 56 states and territories¹². This rapid expansion is not just a reflection of United's
6 market strategy but also indicative of its aggressive and misleading advertising practices that
7 have been central to this MA enrollment growth.

8 99. Financially, United has shown remarkable growth, reporting \$91.9 billion in
9 revenue for the first quarter of 2023, marking a 15% year-over-year increase. This substantial
10 surge (500% increase in revenues United experienced from 2012 to 2022) is primarily fueled by
11 its government-funded MA plans, which form a significant part of its business model. These
12 financial gains underscore its growing reliance on taxpayer-funded healthcare initiatives and
13 depletion of the Medicare Trust Fund¹³.

14 100. United's structure as a vertically integrated entity has raised government
15 concerns about its influence over MA healthcare delivery. By controlling a wide range of
16 healthcare services — from medical practices, labs, clinics, hospices, billing clearing houses, to
17 pharmacies and direct employment of 50,000+ physicians — United has significant control over
18 patient care. This vertical integration has impacted United's inaccurate advertising strategies,
19 promotion of its MA plans through a skewed and incomplete picture of coverage, and
20 contributing to the misleading representation of its MA plans as being an addition to Medicare
21 Parts A and B (rather than a replacement), and superior to OM.

22 **GOVERNMENT REPORTING OF DECEPTIVE MEDICARE ADVANTAGE** 23 **ADVERTISING**

24 101. In 2022, the National Association of Insurance Commissioners filed a complaint
25
26

27 ¹² See <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

28 ¹³ CMS reported that improper *overpayments* to MA plans totaled \$11.4 billion in fiscal year 2022, significantly impacting and eroding the Medicare trust fund. The Medicare Payment Advisory Commission, an independent agency that advises Congress about Medicare, estimates that MA plans collected \$124 billion in improper *overpayments* between 2008 and 2023.

1 with Congress outlining the ongoing MA advertising deception across 14 states¹⁴. This complaint
2 underscores the systemic nature of the deceptive practices in MA marketing. See **Exhibit C**

3 102. A CMS published report¹⁵ further fully substantiated these concerns,
4 underscoring that the number of Medicare beneficiary complaints about MA marketing more
5 than doubled from 2020 to 2021.¹⁶ See **Exhibit D**.

6 103. The Senate Finance Committee's August 2022 investigation into MA marketing
7 complaints unearthed evidence that OM beneficiaries are being inundated with aggressive and
8 misleading marketing, such as:

- 9 (1) Seniors shopping at their local grocery store are approached by insurance agents
10 and induced to switch their Medicare coverage to MA plans;
- 11 (2) Insurance agents selling new MA plans inaccurately tell seniors that their
12 doctors are covered by the new plans;
- 13 (3) Seniors who switch plans find out months later that their doctor(s) is/are actually
14 out-of-network, and they have to pay out-of-pocket to visit their doctor(s);
- 15 (4) Seniors receive mailers that look like official business from a Federal agency, yet
16 the mailer is a marketing prompt from an MA plan or its agent or broker;
- 17 (5) An insurance agent calls seniors up to 20 times a day, attempting to induce them
18 to enroll into MA; and
- 19 (6) Widespread television advertisements with celebrities claim that seniors are
20 missing out on benefits, including higher Social Security payments, in order to
21 prompt seniors to call, MA plan agent or broker hotlines.

22 104. These instances are not isolated but part of a broader trend of deceptive
23 marketing, as identified by government investigations. Such tactics include misusing the

24 ¹⁴ <https://www.kff.org/report-section/how-health-insurers-and-brokers-are-marketing-medicare-report/>

25 ¹⁵ <https://www.finance.senate.gov/imo/media/doc/Deceptive%20Marketing%20Practices%20Flourish%20in%20Medicare%20Advantage.pdf>

26 ¹⁶ "In 2020, CMS received a total of 15,497 complaints related to marketing. In 2021, excluding December, the
27 total was 39,617."
28

1 “Medicare” brand in marketing materials to falsely imply official government endorsement,
 2 leading to confusion among beneficiaries. United’s practices are intentionally deceptive as they
 3 blur the lines between official government communication and private health plan marketing.
 4 United’s MA emails identity United as a “Medicare” expert not a MA expert, and advertise a
 5 “Right Plan Promise” to determine the best “Medicare plan” for the caller.

6 105. The referenced government investigations have revealed various predatory
 7 actions by MA agents, including enrolling beneficiaries under false pretenses and altering the
 8 health plans of vulnerable seniors and disabled individuals without consent. These actions
 9 disproportionately impact the most susceptible groups within the Medicare population, including
 10 those with cognitive impairments and dual eligibles.

11 106. Government reports, including those from the Government Accountability Office
 12 (GAO) have highlighted compliance and enforcement actions against multiple organizations for
 13 inappropriate marketing within the MA space. The GAO issued a report on MA marketing
 14 finding that “CMS took compliance and enforcement actions for inappropriate marketing against
 15 at least 73 organizations that sponsored MA plans⁹.”

16 107. The Health and Human Services Office of the Inspector General (HHS OIG)
 17 examined the marketing of MA plans found that inappropriate marketing was addressed in part
 18 by special election periods (SEP) during which beneficiaries could change their coverage, but
 19 that some beneficiaries experienced outcomes that could not be resolved by a SEP, including
 20 disruption in care and additional financial costs.

21 108. Overall, these government findings and reports paint a concerning picture of the
 22 MA marketing landscape, characterized by widespread deceptive practices that exploit the
 23 vulnerabilities of Medicare beneficiaries, leading to disrupted care and additional financial
 24 burdens for those affected.

25 109. The burden of deceptive and predatory marketing practices falls unequally across
 26 the already susceptible Medicare population. MA plans unfairly target individuals with cognitive
 27 impairments⁴ as well as **those dually eligible for Medicare and Medicaid (so-called “dual**
 28 **eligibles” who are allowed to switch plans once every quarter)** by misadvising them that
 there is urgency to enroll only in a 7-week period in the autumn, between October 15th and
 December 7th. As demonstrated in the Appendix, United MA plans and their contractors are

continuing in manipulative and aggressive sales practices that take advantage of vulnerable OM seniors.

UNITED'S DECEPTIVE ADVERTISING AND INDUCEMENT

110. United has leveraged marketing strategies designed to deliberately mislead, confuse, and unduly pressure Medicare beneficiaries into enrolling in its MA (MA) plans. One of its main schemes is an onslaught of predatory and urgent captioned emails, creating unnecessary panic, fear, and urgency among beneficiaries as demonstrated in the Appendix to this complaint.

111. According to a U.S. Senate Committee on Finance report, such deceptive marketing practices often lead to beneficiaries unknowingly being switched– without their consent– to plans that fail to cover their essential medical needs or preferred providers. The experiences of Patients 1-5 as detailed below, exemplify this pattern of OM beneficiaries being unknowingly enrolled into United MA.

112. The adverse effects of United's MA plan advertisements extend beyond mere inconvenience; they lead to significant confusion and instability in healthcare coverage for beneficiaries, as evidenced by the spike in complaints, particularly in early months of the year. This confusion often results in delayed care and financial burdens, as highlighted in Patients 1-5

113. The effectiveness of United's marketing tactics is evident in its substantial enrollment, adding 655,000 new MA members in the first quarter of 2023 alone. Such an increase, in the context of the exemplar patients and the Appendix, is indicative of the aggressive and misleading nature of its MA advertising campaigns.

114. These practices not only contravene ethical marketing standards but also potentially violate specific legal statutes aimed at protecting consumers from false advertising and deceptive business practices, as outlined in the California False Advertising Law (Business and Professions Code § 17500 et seq.) and the Unfair Competition Law (Business and Professions Code § 17200 et seq.), among others. The following detailed allegations will elucidate the extent and impact of United's deceptive practices.

115. United and its marketers and agents inaccurately advertise the following, often through a barrage of unsolicited emails, calls, and advertisements, in order to enroll as many OM patients into its MA plans by incorrectly representing the following:

- (1) Its relationship with CMS and the Medicare program;
- (2) That its MA plan “*combines*” with Original Medicare program for an added plan, not a replacement;
- (3) Failing to represent that the MA requires the beneficiary to fully relinquish all of their OM benefits;
- (4) Over broadly representing that MA patients receive “better” benefits;
- (5) That the MA plan allows them to continue seeing all of their same doctors;
- (6) That the MA plan directory of providers is unlimited;
- (7) The restrictions of the MA plan which requires prior authorization for services which otherwise were unrestricted under Medicare;
- (8) The very limited vision and dental benefits as overbroad coverage;
- (9) Sales agents state that they cannot even discuss any MA plan options without full disclosure of the beneficiaries’ full social security, name, and birthdate;
- (10) MA plans often deny care based on the insurers' internal determinations about the type of care required, overruling the physicians handling the cases;
- (11) Their improper denial rate of clean claims, which is close to 13-20%;
- (12) Neglecting to transparently explain to beneficiaries that their MA claims may be fully denied and they are responsible for payment in full if they do not stay within the United MA network;
- (13) The deadline for enrollment for dual eligible beneficiaries whereas Defendants know that these particular beneficiaries are eligible for quarterly changes in their plan;
- (14) That disenrollment is simple and thus fully reversible, whereas new medical underwriting would be required for a new Mediap plan; and
- (15) Preventing enrollees from knowing that they could be eligible for a special enrollment period to get into a more suitable plan if they had previously enrolled based on misinformation.

116. United engages in pervasive and deceptive marketing practices, misrepresenting

1 the nature and benefits of its MA plans. United's communications broadly claim that their MA
 2 plans offer "more benefits than Original Medicare," yet fail to disclose essential information.
 3 This includes the limited MA provider networks, prior authorization requirements, and the
 4 impact of these limitations on timely access to care. This omission is especially misleading given
 5 United's express claims of offering "more benefits" than OM. United's failure to provide full and
 6 transparent disclosures constitutes misleading and deceptive practice, violating California's
 7 false advertising law.

8 117. United was fully aware that its MA enrollees were under the mistaken
 9 impression that they would retain their OM benefits alongside the additional advantages of the
 10 MA plans. This belief was rooted in United's marketing strategies, which suggested that the MA
 11 plans 'combined' with OM, obscuring the fact that enrollment in MA required beneficiaries to
 12 forfeit their OM coverage. United capitalized on this confusion, knowing that many enrollees
 13 were not aware of the full implications of switching to an MA plan.

14 118. Besides being deceptive, unfair, and unconscionable, United's practices breach
 15 the implicit trust and contractual promises made to Medicare beneficiaries. In breach of these
 16 promises, United systematically enrolled beneficiaries in MA plans without fully disclosing the
 17 limitations and differences compared to OM, leading to unexpected denials, limitations in
 18 healthcare access, and financial burdens for the beneficiaries, despite assurances of enhanced
 19 benefits and comprehensive coverage.

20 119. United's misrepresentations and omissions made were not accidental, but were
 21 intentional actions carried out in accordance with United's written policies and routine practices
 22 related to marketing and enrolling beneficiaries in MA plans. These practices resulted in
 23 beneficiaries being misled about the nature and limitations of MA plans compared to OM,
 24 leading to adverse impacts on their healthcare access and financial well-being.

25 120. United's direct email marketing and ads use misleading language and imagery,
 26 causing confusion among beneficiaries. These materials often appear as official government
 27 communications or use Medicare logos deceptively, targeting vulnerable populations like those
 28 with limited language comprehension, disabilities, diverse sexual orientations, and identities,
 and those affected by persistent poverty or inequality. Additionally, United's marketing
 campaigns have been found to harass recipients by sending countless unsolicited emails to the

1 same address under various names, creating a false sense of widespread interest or urgency. The
 2 emails directly demand immediacy and necessity for beneficiaries to act but no action
 3 whatsoever is required if the beneficiaries wish to simply retain their OM. The barrage of some
 4 24 emails to one OM beneficiary alone pressure consumers into making quick and unconsidered
 5 decisions without fully understanding the implications of enrolling into MA and by default thus
 6 disenrolling from OM.

7 121. A notable aspect of United's deceptive practices is the targeting of beneficiaries
 8 with Alzheimer's disease or dementia, mentally incapacitated individuals, and beneficiaries with
 9 limited English proficiency, resulting in enrollments without proper consent. See **Exhibit "D"**.

10 122. United's advertisements falsely suggest "\$0 Exams and Care," misleading
 11 beneficiaries about the actual costs involved in their plans. Despite substantial disenrollments
 12 due to these misleading practices, United has achieved a dominant market share in the MA plan
 13 market.

14 123. United's marketing creates undue urgency, employing countdowns and phrases
 15 like "the clock is ticking," leading beneficiaries to believe they will lose benefits if they do not act
 16 quickly. Moreover, United's failure to clarify that these are solicitations and not government-
 17 related communications adds to the deceptive nature of their marketing. United's practices have
 18 led to enrollments under false pretenses, including misrepresentations about coverage networks
 19 and plan benefits.

20 124. The impact of United's deceptive practices is extensive, affecting vulnerable
 21 Medicare populations, including individuals dually eligible for Medicare and Medicaid and those
 22 with cognitive impairments. United's tactics involve misleading representations, pressure
 23 tactics, and aggressive lead generation, impacting beneficiaries' understanding of their
 24 healthcare options and leading to financial harm or diminished healthcare access.

25 125. United's marketing promises such as added benefits "combined" with OM
 26 benefits are misleading. The vision and dental benefits in their MA plans are presented as
 27 comprehensive, yet in reality, these benefits are extremely limited in scope and value. Research
 28 indicates that MA plans, like those offered by United, reduce services, selectively disenroll sicker
 patients, and use lower-rated healthcare providers compared to OM.

126. United's MA plan has 4 key pitfalls with which United fails to consciously fails to

1 disclose in its advertisements: MA patients may not be able to see their regular or trusted
2 doctors, they will be of the 99% of MA members who will require prior authorization for a large
3 number of services causing delay and denial of care, their local hospitals and clinics may not
4 accept their insurance, and they might end up paying for benefits which they are ultimately
5 unable to use like dental services and fitness club benefits.

6 127. United's marketing tactics include targeting special needs beneficiaries with
7 substantial cognitive impairments, and employing deliberately vague and ambiguous terms in
8 ads and emails. This practice misleads seniors and is particularly egregious given the vulnerable
9 nature of the targeted population. United's telephone agents often insist on obtaining full
10 identifying information and Medicare number from beneficiaries at the outset of calls, leading to
11 numerous instances where beneficiaries were enrolled in MA plans without their knowledge or
12 consent. This practice is incentivized by large commissions for each enrollee.

13 128. United's advertisements promise increased Social Security checks, using this
14 tactic as a "bait and switch" to lure beneficiaries into plans that may not meet their needs.
15 United's marketing materials, including emails and mailers, often appear to be official
16 government documents, adding to the confusion and deception experienced by beneficiaries. The
17 company employs tactics such as countdown clocks and urgent language in its communications,
18 misleading beneficiaries about the need to act swiftly and potentially leading to enrollment
19 decisions without adequate consideration.

20 129. United's misleading and deceptive marketing practices constitute a violation of
21 Sections 17200 and 17500 of the California Business and Professions Code, as they amount to
22 unfair competition and false advertising. These practices have caused harm to Plaintiff and the
23 class they represent. Despite knowing the detrimental effects of their marketing tactics, United
24 has not altered its practices, continuing to mislead beneficiaries and enrich itself at the expense
25 of providers and beneficiaries.

26 130. In summary, United's marketing practices for its MA plans are deeply
27 deceptive, targeting vulnerable populations, and resulting in significant harm to both
28 beneficiaries and healthcare providers. This conduct is claimed to violate sections of California's
false advertising and unfair competition laws and has led to systemic issues in the MA market.

131. United's advertisements are misleading and consumers make decisions to enroll

1 in its MA plans based on these misrepresentations, as demonstrated in Patients 1, 2, 3, and 4.

2
3 **UNITED'S AGGRESSIVE MEDICARE ADVANTAGE ENROLLMENT**
4 **TACTICS ARE INCENTIVIZED BY OVERSIZED AGENT COMMISSIONS**

5 132. United employs aggressive enrollment tactics for its MA plans, significantly
6 incentivized by oversized agent commissions and bonuses for each OM disenrollment, as detailed
7 in Exhibit "A" - "*UnitedHealthcare Insurance Company Agent Agreement*." This agreement
8 underscores United's structured approach to expand MA enrollment, leveraging and skewing the
9 financial motivations of agents to enroll callers in the United MA plans rather than retain OM.

10 133. These intermediaries, including sometimes third-party brokers and agents,
11 receive commissions up to \$762 or more per sign-up, with their compensation often misaligned
12 with beneficiaries' best interests. In California, commissions for enrolling beneficiaries into MA
13 plans can exceed \$539, raising concerns about the integrity of the enrollment process.

14 134. Despite acknowledging the potential for aggressive marketing tactics, as
15 indicated by their alleged policy of terminating marketers after exceeding a quota of complaints,
16 United manipulates its reporting to regulatory bodies. United maintains a *dual set of books*: one
17 internal, reflecting the actual, and significantly higher, number of consumer MA advertising and
18 enrollment complaints, and another sanitized version, which they submit to CMS. This practice
19 of concealing the true extent of consumer grievances indicates a deliberate effort to evade
20 regulatory scrutiny and continue their aggressive enrollment tactics without repercussion.

21 135. The impact of these incentivized enrollments is profound. Many MA enrollees
22 report being misled into believing they would retain their OM benefits and that their preferred
23 providers were covered, only to discover later the limitations and exclusions of United's MA
24 network.

25 136. United's marketing tactics also include violations of CMS guidelines, such as
26 initiating unsolicited calls without prior consent and employing coercive sales tactics.
27 Misrepresentations extend to United's relationship with the Medicare program, including
28 communications that misleadingly appear as official Medicare information and falsely represent
United as a "*Medicare Plan Expert*", rather than a *MA plan expert*. United's brokers and agents
are not legally required to present OM beneficiaries with all available options in their area, or

1 even mention OM. Further, the agent's compensation is not always aligned with how they would
2 like to advise beneficiaries.

3
4 **UNITED'S OBSTRUCTIONIST MEDICARE ADVANTAGE CLAIMS**
5 **PROCESSING MATERIALLY PREJUDICE MEMBERS**

6 137. United's MA patients do not receive the same level of medical care and services
7 which are offered to OM patients for a number of reasons. This disparity stems from United's
8 well known systematic delay and denial in processing MA claims, a practice entrenched in their
9 business model. United's approach involves restrictive prior authorizations, pre-payment
10 medical record reviews, systemic claim denials, and other hurdles, impeding timely and equal
11 access to necessary healthcare services.

12 138. United's pattern of requiring multiple burdensome and laborious appeals for
13 routine MA claim processing reflects a bad faith approach, effectively deterring providers from
14 servicing MA patients efficiently and starkly contrasting with the unrestricted access OM
15 patients enjoy.

16 139. These practices, including selective payment for office visits (OV) only, routine
17 denial of associated procedures and lab tests, and high denial rates even when medical records
18 support claims, reflect a deliberate business strategy to limit healthcare services for MA
19 members. This approach not only contravenes the MA requirement to cover the same services as
20 OM but also leads to substantial out-of-pocket costs for beneficiaries. An out of network MA
21 claim typically means the MA beneficiary is stuck with costs with OM would otherwise have
22 fully covered.

23 140. United's admitted policy of improperly using *InterQual* criteria to review hospital
24 admissions for denials further exemplifies their tactics to avoid payment for services aligning
25 with OM regulations, as detailed in **Exhibit C**. Such practices not only impede access to care
26 but also burden patients and providers with repetitive and unjustified demands for medical
27 records.

28 141. This pattern of behavior points to United's overarching strategy to minimize
service provision under MA plans, which results in a substantial disparity in the level of care
MA members receive compared to OM beneficiaries.

142. The protracted and often futile claims appeal process, combined with United's use of medical records obtained in these appeals to inflate risk adjustment coding to CMS for additional "bonus" compensation, reveals a systemic approach to maximize profits at the expense of member care. Despite collecting fixed monthly fees per enrollee from CMS, United demonstrates a systemic reluctance to honor claims, instead using the medical data to make the patients appear sicker than they are to secure further CMS overpayments.

143. United's requirement for providers to incur costs in retrieving and submitting extensive medical records, only to deny receipt and claims, further illustrates their obstructive practices. Such tactics lead to significant administrative burdens for providers and result in additional profits for United, as they collect CMS fees without corresponding claim payments. Specifically, United is known for these tactics:

- a) Improperly and repeatedly demanding the same medical records already within their possession, and further denying they received the records¹⁷;
- b) Regularly denying claims on the grounds that medical records do not support the billed codes. However, this is nearly always a misstatement as the records do indeed substantiate the claims;
- c) Even when they admit they received the medical records and the records fully support the claims, United maintains a near 80%-90% denial rate of high value MA claims.; and
- d) Requiring a series of burdensome and lengthy appeals before it ultimately overturns a fraction of its incorrect denials, but that process has taken up to a year or more- which results in loss of good will toward the MA patient by the providers. As a result, MA patients are more likely to be delayed for services as compared to OM patients, are their care likely to be less than that afforded to OM patients who have no restrictions on their fee for service care.

¹⁷ The April 2022 OIG report confirmed that MA prior authorization requests were improperly denied by falsely claiming inadequate or no medical records, whereas in reality the "beneficiary medical records already in the case file were sufficient to support the medical necessity of the services." See <https://oig.hhs.gov/oei/reports/OEI-09-18-00260.pdf> (Last accessed on 12/1/2023.)

144. Moreover, United's admission that they neither correct MA upcoding errors nor refund CMS for known MA overpayments, despite regulations mandating accuracy and truthfulness in submissions, underscores their systematic approach to exploiting MA program mechanisms for financial gain. (CMS estimates the total MA overpayments between 2008 and 2023 are \$124 billion out of the Medicare Trust Fund.)

145. The collective impact of these practices rightly contributes to the characterization of MA plans as "*Medicare Disadvantage*," highlighting the stark contrast in care quality and accessibility compared to OM.

**UNITED ADMITS TO MEDICARE ADVANTAGE UPCODING AND
RETAINING GOVERNMENT OVERPAYMENTS**

146. United admits to retaining MA overpayments from the government. These billion-dollar overpayments are partly attributable to United's deceptive advertising practices and wrongful acts including upcoding, and the denial of payments for medically necessary care, often determined through AI-driven assessments.

147. United has capitalized on profits resulting from the government's inability to regulate MA program overpayments. This is further compounded by United's deceptive practices in enrolling seniors and individuals with cognitive impairments into their MA plans. United's billing practices include overstating diagnostic codes, thereby overcharging the government and taxpayers. Additionally, the MA plans are characterized by narrow networks of healthcare providers and complex authorization procedures, both of which significantly limit beneficiaries' access to necessary care.

148. United acknowledges that it has inflated diagnosis codes and other criteria to unjustly increase risk-adjusted payments under the MA plans. This manipulation has involved making patients appear sicker on paper than they are, leading to higher reimbursements.

149. Despite several False Claims Act lawsuits filed against United for their MA billing practices, the company has successfully resisted government efforts to recoup these overpayments. In a notable legal action suing CMS, *UnitedHealthcare v. Burwell et al.*, filed in the District of Columbia, United contested the MA overpayment rule, seeking to retain overpayments obtained through its inflated MA risk scores.

150. United's conduct in the MA program has included deceptive advertising practices, biased and one-way claim reviews, and false upcoding, all aimed at maximizing government reimbursements while disregarding fair practice. United's strategy has resulted in the overbilling of the Medicare Trust by exaggerating the severity of patient conditions, underpaying providers with MA fee schedules substantially lower than Medicare rates, and denying beneficiaries medically necessary care. This is further exemplified by their legal actions against the government to retain overpaid funds.

151. By virtue of United's deception, MA members unknowingly disenrolled in from OM, regularly still present their OM cards for medical services. However, OM providers are no longer able to bill Medicare when a patient is covered through the United MA plan. If they do, Medicare ultimately systematically denies these OM claims, paying nothing. Then the United MA plan has to be billed, which will also deny the claim because the provider is not an MA provider. This leads to systematic claim denials leaving the MA members responsible for these out-of-pocket claims.

152. In summary, United's MA operations are marked by systematic overbilling of the Medicare trust by making its members look sicker on paper than they really are, underpaying providers by a MA fee schedule which is 30-40% lower than the Medicare fee schedule, and denying beneficiaries medically necessary care through the described schemes, artifice, and false and deceptive advertising. United also sued the government to scrap the MA overpayment rule, allowing it to retain upcoded overpayments which it admits it was not entitled to obtain, and it obtains healthier members (without paying for their care) by virtue of misleading its members to seek care under their OM card, whereas they no longer have the OM plan or a valid OM card.

**UNITED MEDICARE ADVANTAGE MEMBERS ARE MISLED
SURREPTITIOUS ADVANTAGE ENROLLMENTS AND ORIGINAL
MEDICARE DISENROLLMENTS**

A. Patient 1: Plaintiff

153. Patient 1, Bibi Ahmad, a 91-year-old female and dual eligible Medicare-Medicaid beneficiary with limited language proficiency, has been receiving Medicare since January 1, 1997. During an 11-month period from October 2022-November 2023, she received over 24

1 unsolicited emails from United, often several in a week as documented in the Appendix,
 2 promoting its MA plan. United's barrage of emails created a sense of panic, urgency, and
 3 confusion, leading to a belief that they were official communications from Medicare and that she
 4 needed to act both to preserve her OM benefits, and to "avoid penalties."

5 154. With marginal annual earnings and relying solely on Social Security Income
 6 (SSI), Patient 1 had no cost-sharing or co-pays under her OM. She also enjoyed the freedom to
 7 choose any physician and receive care at all facilities and laboratories, with full prescription
 8 coverage through Medicaid, and never incurred fees for co-pays, medications, or surgeries.

9 155. On December 1, 2022, responding to United's unsolicited MA emails, Patient 1's
 10 family contacted United at 877-690-1761. In a conversation with a United representative,
 11 "Crystal," and later with a licensed sales agent, Anthony Tillman, Patient 1 was assured that
 12 enrolling in a MA Plan would not mean giving up OM. United represented that the MA plan was
 13 a secondary insurance offering additional benefits like dental, vision, and hearing, emphatically
 14 representing it would supplement rather than replace her OM Parts A and B. United
 15 responded to these MA questions as follows:

16 *Question: "So I can still use my traditional Medicare?"*

17 *Answer United: "Yes you can still use your traditional Medicare."*

18 *Question: Any restrictions? Am I giving up my Medicare?*

19 *Answer-United: "No, no, no...it's a secondary insurance."*

20 *"It gives you a fallback."*

21 *"If you get a Medicare Advantage Plan, we cover your dental, vision, and hearing."*

22 *"You're getting more insurance than Medicare."*

23 *"You're not losing Medicare Parts A and B."*

24 *"If you are over age 65, you still get both Parts A and B."*

25 156. Then the call was transferred to a second United agent, Anthony Tillman, who
 26 advised he is a licensed sales agent on a recorded line, and his direct number is 844-544-1953.
 27 He will not proceed any further or respond to any questions about the MA plans until the caller
 28 produced all information from Patient 1's government-issued "red, white, and blue Medicare
 card". He insists on the full date of birth, Medicare number, social security number, and zip
 code... in order that he access the Medicare database and obtain information about the policy

1 and coverage.

2 *Question: "Am I Giving Up My Medicare Part A And B?"*

3 *Answer-United: "No ma'am! It includes all of it... won't give it up."*

4 *"You keep both insurances."*

5 *"It adds benefits under drug and adds on Medicare part C."*

6 *"They will give you extra benefits like vision, hearing, dental."*

7 *"They provide innovation and 'competition' to give you extra benefits and over the counter and utility benefits, grocery benefits."*

8 *Question... Stopped- United Anthony states he will not respond to any other questions about the MA plan without disclosure of the full Medicare number and date of birth.*

9 *Question: "How do I get out of the Medicare Advantage plan?"*

10 *Answer-United: "You can call in last quarter to disenroll."*

11 *United: You are not giving up your Medi-Medi.. you're only adding to it—we're adding on to the plan. The new plan just coordinates your plan- but you don't lose your Medi-Medi. You still have both to fall back on."*

12 *United: "You're not disenrolled from Medi-Medi- will still have it."*

13
14 157. However, Patient 1 had no need for enrollment in an MA plan, which would have
15 restricted her physician access, taken away her OM benefits, and imposed prior authorization
16 restrictions and other limitations, including potential denials of care — none of which she faced
17 under OM. The barrage of emails to Patient 1 never advised her of the pitfalls of MA enrollment
18 and instead misrepresented that she would receive enhanced benefits that would *combine* with,
19 not replace, her OM.

20 158. The misleading nature of United's email campaign and "Right Plan Promise"
21 amounted to deceptive advertising, causing Patient 1 considerable panic, distress, confusion, and
22 emotional distress. This experience underscores the impact of United's marketing tactics on
23 vulnerable individuals like Patient 1, who are led to believe inaccurately that their healthcare
24 coverage and access would be enhanced, not diminished, by switching to a United MA plan.

25 **B. Patient 2: S.J.**

26 159. Patient 2, a 71-year-old resident of Laguna Woods, California, had been enrolled
27 in Medicare since 65, with Part B benefits commencing on January 1, 2017. In late 2018, she
28 received multiple solicitations from United promoting a supplemental health insurance plan
with superior benefits to Medicare. Upon enrolling in early 2019, she was misled by a United

1 agent into believing that she would retain OM as primary insurance with United MA as an
2 additional “fallback” benefit. However, United enrolled her into their MA plan under Monarch
3 Healthcare, causing Patient 2 to completely and unknowingly relinquish her OM benefits and
4 incur \$2,480.50 in out-of-pocket costs for medical and surgical services which United refused to
5 cover.

6 160. At no point was Patient 2 informed by United that she would be relinquishing
7 her OM benefits, nor was she ever advised to stop using or presenting her government-issued
8 OM card for services. This led her to believe her OM coverage was still valid. United’s switch
9 and termination of her OM benefits led to claim denials for services with her OM doctor, which
10 would have been covered under Medicare, leaving her responsible for the full costs.

11 161. Relying on United’s misrepresentations, Patient 2 used her OM card for services
12 at Company 1, an OM provider, believing she had not exchanged her OM for any MA or HMO
13 plan. However, United’s MA enrollment led to claim denials for services with her OM doctor,
14 leaving Patient 2 responsible for the full costs. Despite repeated billing and submission of
15 medical records, United denied her claims, forcing her to personally pay \$2,481.50. Furthermore,
16 United's refusal to pay for genuine medical services rendered to their member resulted in unjust
17 enrichment because United gained a healthier member without remitting any costs for the care.

18 162. On November 11, 2022, “Optum Care Network,” representing United and
19 Monarch, sent a misleading "Second Request" medical records demand letter for Patient 2’s
20 claim which they had already repeatedly denied. The letter claimed an inability to process the
21 claim and demanded resubmission with all physician notes and medical records, despite full
22 knowledge that Company 1 was neither an MA provider nor part United’s MA network. This
23 action, far from being a genuine attempt to resolve a claim, served two purposes. Firstly, it
24 imposed unnecessary administrative burdens and costs on providers, knowing that United MA
25 had no obligation to pay for OM services. Secondly, and more strategically, United used the
26 diagnoses from these resubmitted records to file bonus payment claims with Medicare, thus
27 benefiting from the MA bonus structure designed to reward care for “sicker patients”. This dual
28 approach of refusing to pay for services while leveraging patient information for financial gain

1 resulted in unjust enrichment, demonstrating United's intent to manipulate the system for
2 profit at the expense of genuine medical care and ethical practice¹⁸.

3 **C. Patient 3: D.D.**

4 163. Patient 3, D.D., a 96-year-old residing in Laguna Woods, California, had
5 consistently accessed medical care without issue for 25 years as a “dual eligible” beneficiary of
6 Medicare and Medicaid (“Medi-Medi”). She enrolled in OM upon turning 65, with Part A
7 beginning in 1991, and Part B in 1996. Until 2018, she had not paid out of pocket for services
8 under OM and was able to select any doctor of her choice.

9 164. After moving to California, she received advertisements from United promoting
10 additional health insurance plans, but she was not informed that enrollment into the MA plan
11 would lead to the loss of her OM. She was led to believe that enrolling in a United MA plan
12 would supplement, not replace, her existing Medi-Medi coverage. Contrary to United's
13 representations and her understanding, her enrollment in United’s MA plan resulted in the loss
14 of her OM benefits, leading to denied claims and loss of access to her long-standing healthcare
15 providers.

16 165. Patient 3 later discovered the loss of OM benefits in June 2022 when an OM-
17 accepting doctor's office informed her of the denial of her claims, leaving her responsible for the
18 full payment. She faced rejection from numerous doctors due to her new MA status and was
19 stricken with grief at the prospect of seeking new doctors at the age of 96.

20 166. Patient 3’s unwitting MA enrollment led to cancer treatment delays, inability to
21 continue care with her regular cancer doctor, and ultimately rejection from numerous doctors
22 due to her concealed MA status. She was sent to collections and sued for unpaid bills, and
23 United fully denied her claims. She and the providers also incurred substantial clerical and
24 administrative costs unnecessarily due to United's actions, their repeat demands for medical

25 ¹⁸ United's approach in handling claims exemplifies a deliberate three-fold strategy to (1)
26 deny payments for claims, (2) retain capitated monthly Medicare payments per beneficiary (paid
27 regardless of if United ever pays a single claim for the member), and (3) demand medical record and
28 use diagnosis codes from the unpaid services to obtain unjust benefit from the Medicare bonus MA
structure by making the patients look sicker than they are, and also without incurring corresponding
expenses.

1 records already within their files, and use of diagnosis from those records to use for their MA
 2 bonus reports to Medicare. United obtained unjust enrichment of \$1705 by not paying the claim,
 3 and also having a healthier member as a result of the received uncompensated services.

4 **D. Patient 4: J.S.**

5 167. Patient 4, J.S., a 59-year-old resident of Laguna Niguel, California, qualified for
 6 Medicare (Parts A and B) and Medicaid as a dual eligible, starting on June 1, 2022, due to a
 7 disability. She is also a Qualified Medicare Beneficiary (“QMB”) with waived deductibles for the
 8 eligibility period.

9 168. From November 4, 2022, to December 7, 2022, Patient 4 received unsolicited
 10 emails and correspondences from United which, as documented in the Appendix, created panic,
 11 urgency, and confusion. She believed these emails were from Medicare and that failing to
 12 respond would result in losing her OM benefits and other “penalties.” United’s emails never
 13 advised her of the pitfalls of enrolling in a MA plan. Contrarily, United misrepresented that
 14 enrolling in their MA plan would provide better benefits that would combine with, rather than
 15 replace, her OM.

16 169. Despite having no basis for enrollment in an MA plan— which would have
 17 restricted her physician access, taken away her OM, and imposed prior authorization
 18 restrictions and other limitations— Patient 4 became enrolled in a MA plan by January 1, 2023
 19 due to deceptive MA advertising. She believed she retained her OM benefits.

20 170. From January 2 to January 17, 2023, Patient 4 sought services with multiple OM
 21 providers and presented her OM card, under the impression that she had unrestricted access
 22 due to her "Medi-Medi" status. However, on January 27, 2023, when she presented her OM "red,
 23 white, and blue card" at a new medical appointment with Company 2, an OM provider, she was
 24 informed for the first time that she was enrolled in an MA plan and had thus relinquished her
 25 OM coverage. This revelation left her dumbfounded, as she was never advised by United about
 26 the enrollment in MA or the relinquishment of her OM benefits. She was forced to cancel her
 27 appointment, delay medically necessary care, and spend considerable time contacting Medicare
 28 and the MA plan to rectify her erroneous enrollment.

171. Given Patient 4’s status as a dual-eligible QMB with no out-of-pocket costs for
 medical services or prescriptions, there was no financial or practical reason for Patient 4 to

1 enroll in an MA plan. Such enrollment only restricted her otherwise unhindered access to care,
 2 limited her network of providers, and entangled her in a web of complex prior authorizations
 3 and pre-payment medical record reviews for tests and services, which would otherwise be fully
 4 covered by OM without such restrictions. She also had full access to expansive “vision, dental”,
 5 and mental health services under Medi-Medi, which would have only been restricted and
 6 diminished substantially under an MA plan.

7 **E. Patient 5: G.L.**

8 172. Patient 5, a 91-year-old beneficiary of United MA, experienced a serious fall in
 9 May 2022, resulting in a fractured leg. He was insured by United MA at the relevant period. He
 10 was initially treated at a local hospital and then recommended for hospice care due to his
 11 deteriorating health condition.

12 173. Despite the necessity for ongoing skilled nursing facility (“SNF”) care as per
 13 medical advice, United abruptly terminated Patient 5’s coverage in July 2022. This decision was
 14 made contrary to the evaluations of his healthcare providers, who deemed further inpatient care
 15 as medically necessary.

16 174. Under OM such SNF care would typically be covered for at least 100 days.
 17 However, due to the improper termination of coverage under the United MA plan, Patient 5’s
 18 family was forced to bear significant out-of-pocket expenses for his continued medical care.

19 175. From July 2022 until July 2023, Patient 5’s family incurred out-of-pocket
 20 expenses totaling approximately \$144,000 to \$168,000, based on monthly costs ranging from
 21 \$12,000 to \$14,000. These expenses represent a considerable financial burden that would have
 22 been largely, if not entirely, covered under OM.

23 176. Patient 5’s case vividly illustrates the detrimental financial impact and the
 24 disparity in care afforded by United MA as compared to OM, highlighting the harsh realities
 25 faced by beneficiaries under United’s inferior SNF coverage policies.

26 **COUNT I**

27 **VIOLATION OF THE FALSE ADVERTISING LAW (FAL) (CAL. BUS. AND**
 28 **PROFESSIONS CODE § 17500 ET SEQ.)**

177. Plaintiff and the Class Members re-allege and incorporate by reference the

1 foregoing paragraphs as though fully set forth herein.

2 178. In relevant parts, Bus. and Professions Code § 17500 applies to false advertising
3 in general and sets forth:

4 “It is unlawful for any person, firm, corporation or association, or any employee thereof
5 with intent directly or indirectly to dispose of real or personal property or to perform
6 services, professional or otherwise, or anything of any nature whatsoever or to induce the
7 public to enter into any obligation relating thereto, to make or disseminate or cause to be
8 made or disseminated before the public in this state, or to make or disseminate or cause
9 to be made or disseminated from this state before the public in any state, in any
10 newspaper or other publication, or any advertising device, or by public outcry or
11 proclamation, or in any other manner or means whatever, including over the Internet,
12 any statement, concerning that real or personal property or those services, professional
13 or otherwise, or concerning any circumstance or matter of fact connected with the
14 proposed performance or disposition thereof, which is untrue or misleading, and which is
15 known, or which by the exercise of reasonable care should be known, to be untrue or
16 misleading, or for any person, firm, or corporation to so make or disseminate or cause to
17 be so made or disseminated any such statement as part of a plan or scheme with the
18 intent not to sell that personal property or those services, professional or otherwise, so
19 advertised at the price stated therein, or as so advertised.”

20 179. United, through various media including unsolicited emails, advertisements, and
21 telephone communications as underscored in the *Appendix*, violated Bus. and Professions Code §
22 17500 by publicly making or disseminating untrue or misleading statements, or by causing
23 untrue or misleading statements to be made to the public, in or from California, with the intent
24 to induce members of the public, specifically seniors and those eligible for Original Medicare
25 benefits, with the intent to induce OM members to enroll in its MA plans, and rely on its
26 inaccurate statements about the nature and benefits of their MA plans, representing these plans
27 as combining the MA plan plus Medicare Parts A and B, and the MA plan being superior to
28 benefits under OM. These untrue and misleading statements include but are not necessarily
limited to:

- a) Statements that United’s MA plan *combines* with OM and provides an enhancement to, not a replacement of OM;
- b) Statements that United’s MA plan includes “*all* the benefits of Original Medicare plus extra benefits”;

- c) Statements that there was urgency and immediacy required to avoid Medicare penalties by not responding to United MA plan inducement and “doomsday countdown clock”;
- d) Statements that United MA members may continue to present their OM cards for OM benefits, when it was known by United that the OM card would be invalid and all such claims would be rejected by Medicare;
- e) Statements that United MA members are entitled to retain all government benefits of OM, plus add on a “fallback” plan by having MA; and
- f) Statements regarding their coverage for services without disclosing the plan limitations, restrictions, and prior-authorization requirements.

180. United’s statements were known, or by the exercise of reasonable care should have been known, to be untrue or misleading. United, being an experienced and knowledgeable provider of health insurance plans, had the means and the duty to verify the accuracy of its advertising claims. Furthermore, these misstatements and MA advertising issues have been the subject of a number of government and OIG reports which have been available to United for many years, and which also formed the basis for a number of false claims lawsuits which the government pursued against United for its MA plan conduct.

181. United knew, or should have known that their statements were untrue or misleading at the time they made them and at the time they induced the Class to respond to their inaccurate advertisements and induce enrollment into their MA plan.

182. Plaintiff and the Class Members genuinely relied upon these false and misleading statements in deciding to enroll in United’s MA plans, to their detriment. As a direct result of this reliance, United MA members suffered financial harm and disruptions in healthcare coverage. As exemplified in Patients 1-5, the United MA members incurred out-of-pocket costs ranging from \$2000-\$14,000 for medical services which United improperly denied, and which would have otherwise been covered under OM.

183. United’s conduct of disseminating false and misleading advertisements was part of a deliberate and systemic strategy to induce enrollees to disenroll out of their government OM plan and into United’s MA plan, causing widespread harm to consumers, particularly the elderly, disabled, and vulnerable.

COUNT II

**UNFAIR COMPETITION BY VIOLATION OF SECTION 17200 OF THE CALIFORNIA
BUSINESS AND PROFESSIONS CODE (UCL)**

Against All Defendants

184. Plaintiff and the Class Members re-allege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

185. United has engaged in, and continues to engage in, unlawful, fraudulent, or unfair practices in the conduct of a business, which acts or practices constitute unfair competition, as that term is defined in Bus. and Professions Code § 17200. Such acts or practices include, but are not limited to, the following:

- a) Issuing MA advertisement and plan reports that were neither objective nor accurate, and were influenced by their desire for pleasing stockholders to gain the business or win additional business and revenues;
- b) Issuing plan ratings that were not independent, were not objective or credible, and were influenced by profit motives to unfairly dominate the MA market;
- c) Failing to deal fairly and honestly with OM beneficiaries, including those induced into enrolling into United MA plans by inaccurately stating that the MA plan was an addition to OM, not a replacement;
- d) Failing to manage the conflict of interest inherent in their for-profit MA model, which increased profits by unfairly delaying and denying payments for care;
- e) Maintaining a dual set of books and submitting a more favorable set to CMS which inaccurately represented their correct number of consumer complaints about their MA advertisement and fraudulent enrollment; and
- f) Violating Bus. and Professions Code § 17500 as described in Count I.

186. United's deceptive advertising and unfair business practices include but are not limited to:

- a) Misrepresenting the nature and extent of MA coverage under their managed care plans which resulted in artificial OM disenrollment;

- b) Concealing the requirement for OM beneficiaries to relinquish their traditional OM benefits in order to enroll in United's MA plan;
- c) Creating confusion, panic, and urgency among potential enrollees through misleading advertising and doomsday countdown clocks;
- d) Failing to disclose substantial limitations on healthcare provider choices; and
- e) Engaging in a systematic scheme to mislead consumers for United's financial gain, at the expense of the consumers' rights to accurate and transparent information.

187. The acts complained of in each of the preceding paragraphs of this Complaint, and each of them, constitute unfair, unlawful, and/or fraudulent business acts and practices in competition, in violation of Section 17200 of Business and Professions Code (hereinafter "UCL¹⁹"). Such acts and violations have not abated and will continue to occur unless enjoined.

188. United violated Bus. and Professions Code §17200 through their deceptive advertising and marketing practices as described herein, have engaged in unlawful business acts and practices by making false and misleading statements about the nature and benefits of their MA programs, in direct violation of numerous state laws and regulations governing insurance and advertising practices.

189. Defendants have further engaged in unfair business practices by manipulating the market for healthcare insurance, exploiting the vulnerabilities of elderly, infirm, and disabled consumers, and establishing a dominant presence in the California healthcare market through deceptive means, thereby harming both consumers and competing healthcare providers.

190. United has had the largest share of MA enrollment and largest growth in enrollment since 2010, increasing from 20 percent of all MA enrollment in 2010 to 29 percent in 2023²⁰. United has achieved this rank through a number of known inaccurate marketing

¹⁹ The Cal Supreme Court holds that under the UCL, '[p]revailing plaintiffs are generally limited to injunctive relief and restitution.' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144 [131 Cal.Rptr.2d 29, 63 P.3d 937].)

²⁰ Medicare Advantage in 2023: Enrollment Update and Key Trends | KFF

1 tactics. For the seventh year in a row, enrollment in United's plans grew more than any other
2 firm, increasing by more than 1 million beneficiaries between March 2022 and March 2023²¹.

3 191. The average Medicare beneficiary in 2023 has access to 43 MA plans, the largest
4 number of options ever. Despite most beneficiaries having access to plans operated by several
5 different firms, MA enrollment is highly concentrated among a small number of firms. United,
6 alone, accounts for 29% of all MA enrollment in 2023, or 8.9 million enrollees.

7 192. As demonstrated in the Appendix (24 United emails to one OM beneficiary
8 spanning from November 2022 to November 2023), United's MA enrollment has been successful
9 through inaccurate and directed targets- and misleading a highly susceptible group of the
10 population, who are elderly, disabled, cognitive impaired, and/or Medicare eligible who live on
11 marginal fixed incomes.

12 193. United has systematically engaged in practices designed to deny nearly all high
13 value MA claims on the first pass as a default approach, operating under a calculated
14 presumption that most beneficiaries and providers will either not detect or not challenge these
15 denials. This practice is encapsulated in United's own internal communications and strategies,
16 where it is suggested to "[d]eny [all claims] and see which ones come back on appeal." Such a
17 policy is implemented with the understanding that the majority of patients and providers, often
18 overwhelmed or deterred by the complexity of the appeal process, will ultimately opt to pay the
19 bills themselves rather than contest the denials. *See* Patient 2 and Patient 3.

20 194. In internal corporate documents, United coldly calculates that only an estimated
21 less than 5% of MA individuals whose claims are denied will actually appeal the decision. This
22 approach, focused on cost-saving rather than patient care or contractual obligations, further
23 evidences United's systematic and deliberate strategy to enhance profits at the expense of its
24 beneficiaries.

25 <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/> (Last
26 accessed 11/18/2023)

27 ²¹ Medicare Advantage in 2023: Enrollment Update and Key Trends
28 <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/#:~:text=Medicare%20Advantage%20Enrollment%20by%20Firm%20or%20Affiliate%2C%202010%2D2023&text=For%20the%20seventh%20year%20in,March%202022%20and%20March%202023.> (Last accessed 11/18/2023)

1 195. United further engaged in a systematic scheme to save money at the expense of
2 beneficiaries and providers, resulting in substantial financial gains for the company. This
3 scheme at one end begins with deceptive advertising to induce enrollment into their MA plan,
4 and at the back end involves automatically denying MA claims and relying on the low
5 probability of provider appeals due to administrative burdens. In cases where appeals were
6 made, United would often repeatedly demand medical records they already possessed as a
7 condition of processing the claim, reject previously paid OM claims, and delay payments until
8 many months after services were rendered, leaving patients and providers with unpaid bills.
9 Further, United benefited by having its members receive medical care at no cost to itself, while
10 still receiving monthly government capitation PMPM fees for each Medicare enrollee, regardless
11 of whether any claims were paid. Lastly, United also manipulated patient data, using false codes
12 to make patients appear sicker than they were, thereby unjustly enriching itself through higher
13 payments from the government, while failing to pass these savings to beneficiaries or return
14 overpayments. These cumulative practice led to billions of dollars in unjust earnings for United,
15 boosting its bottom line and shareholder value, with no corresponding benefit to its members or
the healthcare community. *See* Exhibits D, E, and F.

16 196. These acts have caused and continue to cause significant harm to consumers who
17 were misled into enrolling in Defendants' plans, resulting in loss of OM benefits, restricted
18 access to healthcare providers, unexpected out-of-pocket medical costs, and denial of necessary
19 services. The conduct of Defendants as alleged herein constitutes a fraudulent business practice
20 under the UCL, as it involves deception, misrepresentation, and concealment of material facts
21 known to Defendants, with the intention that consumers rely upon such deception, to their
22 detriment. Defendants' actions have also caused substantial injury to competitors and the
23 marketplace by distorting the competitive conditions in the healthcare market in California.
24 Plaintiff, and the Class Members as a result of Defendants' unlawful, unfair, and fraudulent
25 business practices, have suffered injury in fact and have lost money or property, or incurred debt
for unpaid medical bills.

26 197. The acts complained of in each of the preceding paragraphs of this complaint, and
27 each of them, constitute unfair and/or unlawful acts in competition in violation of Section 17200.
28 Such acts and violations have not abated and will continue to occur unless enjoined.

COUNT III
VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE, § 1750
ET SEQ. (CLRA)
Against All Defendants

198. Plaintiff and the Class Members re-allege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

199. United engaged in deceptive advertising by inaccurately representing their MA plans as equivalent to OM or traditional fee-for-service (“FFS”) Medicare. This deception includes, but is not limited to, statements claiming MA plans offer *'all the benefits of Original Medicare plus extra,'* and suggesting that enrollment in United’s MA plans would not result in the loss of OM benefits.

200. United engaged in deceptive advertising and marketing by falsely representing their MA plans as equivalent to OM. This included misleading statements about the benefits, coverage, and restrictions of their MA insurance products.

201. United’s misrepresentations were material, influencing the decision-making process of elderly, infirm, and disabled beneficiaries. Defendants falsely promoted the MA managed care plans as having comparable benefits and freedom of choice akin to OM.

202. Consumers relied on United’s inaccurate representations, under the genuine belief that they were maintaining OM while merely adding additional benefits with a new MA plan. This reasonable reliance, influenced by Defendants’ decade-long scheme and targeted advertising to a vulnerable demographic, led to unexpected consequences including loss of preferred healthcare providers and unexpected out-of-pocket medical costs. United engaged in this deception to disenroll the largest number of beneficiaries out of OM, obtain the largest market share of MA patients, and for the United shareholder’s financial gain.

203. As a direct result of justifiable reliance on United’s inaccurate representations, consumers suffered significant damages, including the loss of OM eligibility, being restricted to limited United MA healthcare provider networks, and facing unexpected medical expenses and denied services, contrary to their understanding of the MA plan benefits. United knowingly and intentionally concealed critical information regarding the relinquishment of government OM benefits when enrolling in their MA managed care plans, because otherwise many OM enrollees

1 including Patients 2,3, and 4 would not have enrolled in United MA.

2 204. Defendants failed to disclose essential information, including the limitation on
3 the choice of healthcare providers and the complete relinquishment of OM benefits as an express
4 condition of enrolling into United's MA plans. Such omissions were deliberate and designed to
5 mislead consumers.

6 205. Defendants' campaigns deliberately created a false sense of urgency and
7 confusion, pressuring consumers to make hasty decisions within misleading 'deadlines' without
8 full awareness of the implications, particularly concerning the loss of OM benefits and the
9 limitations of United's MA plans.

10 206. The conduct of Defendants constitutes unfair and fraudulent business practices
11 under the CLRA, as it involved a systematic approach to deceive and mislead consumers for
12 financial benefit, at the expense of the consumer's right to transparent and truthful information.

13 **COUNT IV**
14 **NEGLIGENT MISREPRESENTATION**
15 **Against All Defendants**

16 207. Plaintiff and the Class Members re-allege and incorporate by reference the
17 foregoing paragraphs as though fully set forth herein.

18 208. United owed a duty of care to the Plaintiff and the Class Members, including
19 Patient 2 and Patient 3, as it engaged in business practices that directly affected the Plaintiff
20 and the Class Members' decisions regarding their healthcare coverage.

21 209. United, through its agents, producers, and marketing materials, made
22 representations to Plaintiff and the Class Members that their MA plans would provide benefits
23 that "*combine*" with their OM, implying an addition, rather than a replacement of OM.
24 However, United did not disclose that enrollment in their MA plans would result in the complete
25 relinquishment of OM benefits, and consequently, beneficiaries' red, white, and blue OM cards
26 would become void and unusable for any further services. Specifically, United consciously did
27 not advise MA beneficiaries that they must not present their red, white and blue OM cards for
28 any further services as it was void.

209. In conversation with United representative ("Crystal") on December 1, 2022, it
was falsely explained that United's MA Plan is an additional insurance and does not replace

1 Medicare Parts A and B. The representative inaccurately asserted that individuals could
2 maintain both their OM and the new MA Plan, with the MA Plan supposedly offering additional
3 coverage for dental, vision, and hearing, which was portrayed as an enhancement rather than a
4 replacement of their existing OM coverage. United emphasized that individuals can still use
5 their OM alongside the new MA plan. Additionally, United's representative assured that
6 individuals over age 65 can maintain both Medicare Parts A and B while having the MA Plan as
7 a "fallback"– which is untrue.

8 211. United licensed sales agent Anthony Tillman explained that their MA plan
9 includes Medicare Part A and B without individuals giving up their OM coverage at all. United
10 misstated that both insurances (MA and OM Parts A and B) coexist, and the MA plan offers
11 additional benefits such as "free groceries", prescription drug coverage, Medicare Part C, vision,
12 hearing, dental, and various other perks like over the counter medications and utility benefits.
13 United advises that it allows disenrollment only in the last quarter of the year although that is
14 untrue since Medi-Medi beneficiaries may change quarterly without penalty. In sum, United
15 consistently emphasizes that individuals retain their OM coverage alongside the new plan,
16 which coordinates with it- not replaces the OM.

17 212. A significant majority of dual eligible Medicare beneficiaries, nearly ninety-nine
18 percent, were unaware that they forfeited their OM when induced to enroll in United's MA
19 plans. In most instances, United representatives explicitly stated that beneficiaries would retain
20 all OM benefits and simply gain additional benefits under MA as a 'fallback plan.' Rarely, if
21 ever, were beneficiaries transparently informed that they had to relinquish their OM to enroll in
22 MA.

23 213. Further, United's unsolicited emails convey the impression that the MA
24 recipient will still retain and be entitled to the benefits under OM. With the target of these ads
25 being the elderly, these are deceptive and incorrect. United's emails further create a sense of
26 urgency that can lead to anxiety for the beneficiary, and this tactic is reminiscent of similar MA
27 television commercials.

28 214. United further represented to Plaintiff and the Class Members that its MA plans
were superior to OM. These representations were made negligently and without reasonable
grounds for belief in their truth, demonstrating a careless disregard for the accuracy of their

1 information. The MA members reasonably and justifiably relied on these representations in
 2 deciding to enroll in United's MA plans, expecting that their healthcare needs would be met
 3 similarly to or better than under OM .

4 215. As a direct and proximate result of relying on United's negligent
 5 misrepresentations, Plaintiff and the Class Members suffered harm, including but not limited
 6 to, the loss of access to preferred healthcare providers, unexpected medical expenses, and
 7 significant disruptions in their healthcare coverage.

8
 9 **COUNT V**
INTENTIONAL MISREPRESENTATION
Against All Defendants

10 216. Plaintiff and the Class Members re-allege and incorporate by reference the
 11 foregoing paragraphs as though fully set forth herein.

12 217. United, through its agents and marketing materials, made materially false
 13 representations to Plaintiffs and the Class Members that their MA plans would 'combine' with
 14 their OM benefits. However, United failed to disclose that enrollment in MA plans would result
 15 in the complete relinquishment of their OM benefits, rendering their government-issued, red,
 16 white, and blue OM cards void for further services.

17 218. Moreover, United failed to advise the OM beneficiaries that they were fully
 18 relinquishing their OM benefits, and that they must not present their government-issued,
 19 official red, white and blue OM cards for any further services– as it was void. United's failure
 20 resulted in the MA members incorrectly presenting their OM cards for services, which as a
 21 result of being void- caused the full balance of services to become the financial responsibility of
 22 the MA members.

23 219. United further represented to Plaintiff and the Class Members that the MA
 24 plans were superior to OM because United's Ma plan was an enhancement to, not a replacement
 25 of OM. These representations were made intentionally to induce enrollment into their MA plans
 26 and without reasonable grounds for belief in their truth.

27 220. United either knew that these representations were false or made them
 28 recklessly without regard for their truth, demonstrating a willful disregard for the accuracy of
 information provided to the seniors. United made these false representations with the intention

1 of inducing Plaintiff and the Class Members , including Patient 2 and Patient 3, to enroll in their
2 MA plans. Plaintiff and the Class Members justifiably relied on these false representations,
3 believing that they would retain benefits similar to OM .

4 221. Patient 3, a 91-year-old female and resident of Orange County, California, dual
5 eligible Medicare-Medicaid beneficiary, began receiving OM benefits on January 1, 1997. She
6 relies on Social Security Income with annual earnings well below \$10,-00, incurring no cost-
7 sharing or co-pays under OM, and has availed medical services from any physician and medical
8 facility nationwide since 1997, with full prescription, dental, and vision coverage through
9 Medicaid.

10 222. From November 1, 2022 to November 20, 2023, Patient 1 received approximately
11 25 unsolicited marketing emails from United at her residence in Orange County, as documented
12 in the Appendix. These emails were misleadingly formatted to appear as urgent communications
13 and otherwise official communications from Medicare, or “Medicare Plan Experts.”

14 223. On December 1, 2022, in response to these misleading emails, Patient 3’s family,
15 on her behalf, contacted United at phone number 877-690-1761, engaging in a recorded
16 conversation with representatives “Crystal” and subsequently, licensed sales agent Anthony
17 Tillman, at United's call center.

18 224. United’s representatives falsely assured that enrollment in their MA plan would
19 not result in the loss of OM benefits and would provide a “fallback” plan, as well as additional
20 benefits such as dental, vision, and hearing coverage, contrary to the limitations and additional
21 costs associated with MA plans.

22 225. The false assurances given by United’s representatives were in direct
23 contradiction to the actual terms of United's MA plans. In reality, enrolling in an MA plan
24 required beneficiaries to relinquish their OM benefits and subjected them to prior authorization
25 requirements, potential care denials, and limited physician access, none of which were disclosed
26 to Patient 1 or her family during the enrollment process.

27 226. These false statements were directly contradicted by the actual terms of United's
28 MA plans, which require beneficiaries to relinquish their OM plan when they sign up for an MA
plan, and imposed prior authorization requirements, potential denials of care, and limited
physician access, none of which were disclosed to Patient 3 or her family.

227. As a direct result of these false representations, Patient 3 under the mistaken belief that urgent enrollment in the MA plan was necessary to retain her OM benefits and avoid “penalties”, experienced significant panic, confusion, and distress. Her erroneous switch to the United MA plan led to denied claims and financial liability for medical bills totaling \$2,482, expenses that would have been fully covered under OM.

228. As a direct result of this reliance, Plaintiff and the Class Members suffered harm, including loss of access to preferred healthcare providers, unexpected medical expenses, and disruption in healthcare coverage. There is a direct causal connection between United's intentional misrepresentations and the damages suffered by the Class.

COUNT VI
UNJUST ENRICHMENT
Against All Defendants

229. Plaintiff and the Class Members re-allege and incorporate by reference the foregoing paragraphs as though fully set forth herein.

230. United enrolled Plaintiff and the Class Members, including Patients 2 and 3, in its MA plans through deceptive advertising, leading them to believe they would retain their OM benefits alongside additional United MA coverage. This misleading information led beneficiaries to unwittingly replace, rather than supplement, their OM Part A and B plans with United's MA program.

231. United's actions resulted in its MA members relinquishing their OM benefits, causing them to incur substantial out-of-pocket medical expenses which would have otherwise been covered under OM.

232. As a direct result of its deceptive practices and subsequent refusal to cover claims under the MA plans, United was unjustly enriched. This enrichment occurred at the expense of MA members who bore the financial burden for medical services that, under fair and honest practices, should have been covered by United.

233. United MA members including Patient 2 and Patient 3 who each incurred more than \$2000 out-of-pocket suffered financial harm due to United's misleading representations and actions.

234. United retained unjust enrichment by failing to remit payment for the medical

1 services required for its MA members, as facilitated by its acts of by providing misleading
 2 information through emails, advertisements, and interactions with agents about its MA plans.
 3 Patients 2 and 3 after receiving misleading assurances from United, faced unexpected out-of-
 4 pocket costs of several thousand dollars for medical expenses due to United's failure to disclose
 5 that enrollment in its plan would result in the loss of OM.

6 235. This unjust enrichment was a direct result of United's deceptive practices, as
 7 they received the financial benefit of not paying for services that they were obligated to cover
 8 under the MA plans.

9 236. As a result of United's deceptive business practices, Patient 2 and Patient 3 had
 10 medical and surgical services which were fully uncompensated by United, while at the same
 11 time the government and thus working taxpayers remitted a fixed monthly fee to United for
 12 fully taking care of the medical needs of these patients.

13 237. Through its actions, United has received benefits for services from providers to
 14 which it was not entitled, leading to unjust enrichment. Defendants' retention of funds that
 15 rightfully belong to the patients or their providers, based on the inaccurate portrayal of policy
 16 terms and improper denial of valid claims, is inequitable. Restitution is warranted to correct this
 17 imbalance.

18 238. Under the common law doctrine of unjust enrichment, it is inequitable for
 19 Defendants to be permitted to retain benefits received from their misleading representations
 20 that United's MA plans combined with OM benefits. These actions, coupled with the subsequent
 21 denial of medical payments owed, were conducted in an unfair, unconscionable, and oppressive
 22 manner. Retaining such funds under these circumstances constitutes unjust enrichment,
 23 making it inequitable for Defendants to keep these ill-gotten proceeds.

24 **COUNT VII**
 25 **BREACH OF EXPRESS WARRANTY**
 26 **Against All Defendants**

27 239. Plaintiff and the Class Members re-allege and incorporate by reference the
 28 foregoing paragraphs as though fully set forth herein.

239. United enrolled the Class, including Patients 2 and 3, in MA plans through
 deceptive advertising, leading them to believe they would retain their OM benefits while

1 receiving additional MA coverage. In other words, United explicitly misled beneficiaries to
2 believe that enrolling into United MA program would combine, not replace their OM Part A and
3 B plan.

4 241. United's actions resulted in Plaintiff and the Class Members relinquishing their
5 OM benefits, causing them to incur substantial out-of-pocket medical expenses which would
6 have otherwise been covered under OM.

7 242. On or about November 13, 2023 and additional dates, Defendants sent emails
8 and advertisements to Plaintiff and Class Members containing specific representations, forming
9 part of United's '**Right Plan Promise**.' This communication explicitly committed to assisting
10 beneficiaries in finding the right "Medicare" plan tailored to their needs and budget, constituting
11 an express warranty about the personalized and budget-conscious nature of the plan selection
12 process.

13 243. Furthermore, the email as many others prominently advertised 'Exams and care'
14 at '\$0' cost. This representation, however, was misleading as the '\$0' cost was applicable only to
15 a very narrowly defined range of a few preventive services, contrary to the broad implication of
16 the advertisement. This misleading representation created an express warranty, leading United
17 MA members to erroneously believe that a wider range of medical services would be available at
18 no cost under United's MA plans.

19 244. This representation, however, was misleading and constituted an express
20 warranty, as the "\$0" cost applied only to a very narrowly defined range of preventive services,
21 contrary to the broad and unqualified implication of the advertisement. Such a representation
22 misled United MA members into believing that a wider range of medical services would be
23 available at no cost under United's MA plans.

24 245. Additionally, the emails positioned United as a '*Medicare Plan Expert*,' a
25 representation that was deceptive, aimed at establishing false expertise and trustworthiness in
26 "Medicare", not MA. This claim, effectively an express warranty, served as a marketing tactic to
27 promote United's MA plans, without adequately disclosing their limitations and specific terms.

28 246. Additionally, the emails advertise United as a "Medicare Plan Expert," which
Plaintiff contends was a deceptive representation aimed at establishing a false sense of expertise
and trustworthiness in the context of Medicare plans. In reality, this claim was a marketing

1 tactic to promote United's own MA plans, without adequately disclosing the limitations and
2 specific terms of those MA plans.

3 247. By virtue of these representations, which constituted express warranties,
4 Defendants led OM beneficiaries to enroll in United's MA plans under inaccurate pretenses,
5 resulting in MA members incurring unexpected and substantial out-of-pocket medical expenses,
6 which would have otherwise been covered under OM.

7 248. United breached the express warranties made in their November 13, 2023 email
8 and other similar advertisements, particularly by failing to provide the comprehensive,
9 combined MA and OM coverage as represented. This breach has caused financial harm to Class
10 Members, who incurred unexpected medical expenses that contradicted the advertised terms.

11 249. As a result of United's deceptive business practices, Patient 2 and Patient 3 had
12 medical and surgical services which were fully uncompensated by United, while at the same
13 time the government remitted a fixed monthly fee to United for taking care of the medical needs
14 of these patients.

15 **REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF**

16 250. Plaintiff and the Class Members, pursuant to the Unfair Competition Law
17 (UCL), the Consumers Legal Remedies Act (CLRA), and the False Advertising Law (FAL),
18 hereby request the Court to issue public injunctive relief.

19 251. This sought relief aims to prohibit United's unlawful practices that pose a threat
20 to the general public. Specifically, this suit seeks an order enjoining United from continuing its
21 deceptive advertising and enrollment practices related to its MA plans. The primary purpose
22 and effect of this relief would be to prevent ongoing and future harm to consumers at large by
23 stopping United's unlawful acts that have been detailed in this complaint.

24 252. This action also seeks an order that United explicitly disclose in all MA materials
25 that MA enrollment entails fully forfeiting OM Part A and Part B fee for service benefits and
26 renders the government-issued, OM red, white, and blue card fully invalid. Such clear
27 statements and measure will ensure complete transparency for both beneficiaries and providers.

28 253. Additionally, declaratory judgment is required to clearly define the legal rights
and obligations of the parties, particularly in relation to United's practices under these statutes.

1 The aim of this combined relief is to cease harmful practices immediately and to establish clear
2 legal standards to prevent future harm and protect public interest.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38(b) of the federal rule of Civil procedure, Plaintiff and the Class
5 Members demand a trial by jury on all claims so triable.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff and the Class Members pray for the following relief and judgment
9 against United as follows:
10

- 11 **A.** Certifying the Class and appointing Plaintiff as Class Representative and
12 Plaintiff's counsel as Class Counsel;
- 13 **B.** Declaring that United violated its legal obligations in the manner alleged above;
- 14 **C.** Permanently enjoining United from engaging in the unlawful, unfair, and
15 fraudulent practices described above;
16
- 17 **D.** Awarding Plaintiff and the Class Members benefits due, plus pre- and post-
18 judgment interest; or ordering United to re-adjudicate the benefit amounts due for
19 Plaintiff and the Class Members' claims and to cause the full amount of benefits
20 owed to be paid, plus pre- and post-judgment interest;
- 21 **E.** Ordering United to disgorge any amounts by which it was unjustly enriched
22 through the violations detailed above, to issue restitution for the losses suffered by
23 Plaintiff and the Class Members as a result of such misconduct, to order payment of
24 an appropriate surcharge, and/or other appropriate equitable relief;
- 25 **F.** Awarding compensatory damages to Plaintiff and the Class in the sum \$495 million
26 for losses and harm sustained as a result of Defendants' unlawful, unfair, and
27 fraudulent business practices;
28

EXHIBITS

- 1
- 2
- 3 **A. Exhibit A:** "UnitedHealthcare Insurance Company Agent Agreement", outlines the terms
- 4 and conditions under which agents are appointed to market and promote United's MA
- 5 Plans and other health insurance products.
- 6
- 7 **B. Exhibit B:** <https://www.uhc.com/> (Last Accessed on 11/25/2023) showing government
- 8 issue red, white and blue Original Medicare card, and United Healthcare Medicare
- 9 Advantage Webpage (Last accessed 11/20/2023)
- 10
- 11 **C. Exhibit C:** American Hospital Association November 20, 2023 letter to CMS regarding
- 12 UnitedHealthcare MA plan.
- 13
- 14 **D. Exhibit D:** National Association of Insurance Commissioners, multi-state letter dated
- 15 May 5, 2022 to the Senate underscoring Medicare Advantage advertising deception.
- 16
- 17 **E. Exhibit E:** Exemplar physician letter dated July 21, 2023 to United patients
- 18 underscoring United's unfair payment practices and termination of all United contracts.
- 19
- 20 **F. Exhibit F:** Exemplar media coverage dated September 25, 2023 outlining hospitals and
- 21 healthcare systems nationwide terminating all contracts with United Medicare
- 22 Advantage plans, citing United's unfair payment practices and improper claim delay and
- 23 denial tactics.
- 24
- 25
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- 28